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United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9595

CARL ALDO MARZANI, ALIAS TONY WHALES,
Appellant,

v.

UNITED STATES OF AMERICA,
Appellee.

Appeal from the District Court of the United States for the District of Columbia

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JOINT APPENDIX TO BRIEFS

PLEADINGS, DOCKET ENTRIES AND OTHER PAPERS

1172 G. J. Original

Criminal No. 48-47

Title 18, Section 80, U. S. C.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

THE UNITED STATES OF AMERICA

v.

CARL ALDO MARZANI,
alias TONY WHALES.

THE DISTRICT OF COLUMBIA, SS:

JANUARY TERM A. D. 1947

The Grand Jurors of the United States of America, duly impaneled and sworn to inquire within and for the District of Columbia and now attending the said Court upon their oaths present:

That on or about the twenty-ninth day of July in the year 1942 at Washington in the District of Columbia and within the jurisdiction of this Court;

CARL ALDO MARZANI,
alias TONY WHALES,

the defendant herein, whose more full, true and correct name is to the Grand Jurors unknown and who on and after March 7, 1942 was employed on a temporary basis subject to a character and fitness investigation, by the Office of the Coordinator of Information and by its successor, the Office of Strategic Services, both of which offices were agencies of the United States having jurisdiction of matters

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concerning the security and welfare of the United States during a period of war, and who, in a civilian capacity, was so employed (by the Office of Strategic Services) on or about July 29, 1942, did wilfully, unlawfully, and feloniously made a false and fraudulent statement and representation in a matter within the jurisdiction of the Federal Bureau of Investigation, an agency of the United States,
1173 said matter being an investigation of the character and fitness of said CARL ALDO MARZANI for employment by the Office of the Coordinator of Information and the Office of Strategic Services, which said investigation was conducted by the said Federal Bureau of Investigation pursuant to a request by the said Office of the Coordinator of Information under the authority of statutes, rules and regulations of the United States, and executive orders of the President of the United States; that is to say;

That on or about July 29, 1942, in the city and district aforesaid, in response to a question propounded by a duly authorized agent of the said Federal Bureau of Investigation during the course of and pursuant to the aforesaid character and fitness investigation, the said CARL ALDO MARZANI falsely stated and represented that he had never been a member of the Communist Party, which said statement and representation was false and fraudulent in this, to-wit; that the said CARL ALDO MARZANI was in fact a member of the said Communist Party (Sixth Assembly District, New York, New York) during the years 1940 and 1941, all of which was well known to the said defendant at the time he made the aforesaid false and fraudulent statement and representation.

Contrary to the statute in such cases made and provided (Section 80, Title 18 U. S. C.) and against the peace and dignity of the United States of America.

COUNT II.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present;

That on or about the twenty-ninth day of July in the

year 1942 at Washington in the District of Columbia and within the jurisdiction of this Court;

CARL ALDO MARZANI,
alias TONY WHALES,

the defendant herein, whose more full, true and correct name is to the Grand Jurors unknown and who on
1174 and after March 7, 1942 was employed, on a temporary basis subject to a character and fitness investigation, by the Office of the Coordinator of Information and by its successor, the Office of Strategic Services, both of which offices were agencies of the United States having jurisdiction of matters concerning the security and welfare of the United States during a period of war, and who, in a civilian capacity, was so employed (by the Office of Strategic Services) on or about July 29, 1942, did wilfully, unlawfully, and feloniously make a false and fraudulent statement and representation in a matter within the jurisdiction of the Federal Bureau of Investigation, an agency of the United States, said matter being an investigation of the character and fitness of said CARL ALDO MARZANI for employment by the Office of the Coordinator of Information and the Office of Strategic Services, which said investigation was conducted by the said Federal Bureau of Investigation pursuant to a request by the said Office of the Coordinator of Information under the authority of statutes, rules and regulations of the United States, and executive orders of the President of the United States; that is to say;

That on or about July 29, 1942, in the city and district aforesaid, in response to a question propounded by a duly authorized agent of the said Federal Bureau of Investigation during the course of and pursuant to the aforesaid character and fitness investigation, the said CARL ALDO MARZANI falsely stated and represented that he had never attended any meetings of the Communist Party, which said statement and representation was false and fraudulent in this, to-wit; that the said CARL ALDO

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MARZANI did, in fact, attend meetings of the Communist Party in the City of New York, New York, on or about the following dates, to-wit; July 22, 1940, July 23, 1940, August 12, 1940, September 3, 1940, October 14, 1940, October 17, 1940, November 25, 1940, December 2, 1940, December 9, 1940, February 11, 1941, February 22, 1941, May 28, 1941, September 22, 1941, and at various other
1175 times, all of which was well known to the said CARL ALDO MARZANI at the time he made the aforesaid and fraudulent representation.

Contrary to the statute in such cases made and provided (Section 80, Title 18 U. S. C.) and against the peace and dignity of the United States of America.

COUNT III.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present;

That on or about the twenty-ninth day of July in the year 1942 at Washington in the District of Columbia and within the jurisdiction of this Court;

CARL ALDO MARZANI,
alias, TONY WHALES,

the defendant herein, whose more full, true and correct name is to the Grand Jurors unknown and who on and after March 7, 1942 was employed, on a temporary basis subject to a character and fitness investigation, by the Office of the Coordinator of Information and by its successor, the Office of Strategic Services, both of which offices were agencies of the United States having jurisdiction of matters concerning the security and welfare of the United States during a period of war, and who, in a civilian capacity, was so employed (by the Office of Strategic Services) on or about July 29, 1942, did wilfully, unlawfully, and feloniously make a false and fraudulent statement and representation in a matter within the jurisdiction of the Fed-

eral Bureau of Investigation, an agency of the United States, said matter being an investigation of the character and fitness of said CARL ALDO MARZANI for employment by the Office of the Coordinator of Information and the Office of Strategic Services, which said investigation was conducted by the said Federal Bureau of Investigaiton pursuant to a request by the said Office of the Coordinator of Information under the authority of statutes, rules and regulations of the United States, and executive orders of the President of the United States; that is to say;

1176 That on or about July 29, 1942, in the city and district aforesaid, in response to a question propounded by a duly authorized agent of the said Federal Bureau of Investigation during the course of and pursuant to the aforesaid character and fitness investigation, the said CARL ALDO MARZANI falsely stated and represented that he had never contributed any services to the Communist Party, which said statement and representation was false and fraudulent in this, to-wit; that during the years 1940 and 1941, at divers times and places in the City of New York, New York, the said CARL ALDO MARZANI did, in fact, contribute various services to the said Communist Party among which were the following;

(a) Serve as Branch Organizer (Branch F. 2), Sixth Assembly District, and as Section Educational Director in the Sixth Assembly District;

(b) Deliver lectures to Communist Party recruit classes on the principles of communism.

(c) Issue and collect Communist Party membership books;

(d) Compose, edit, publish and distribute pamphlets in the interest and on behalf of the Communist Party.

(e) Counsel and advise Communist Party members and recruits with respect to methods and means to be employed in infiltrating divers groups and societies for the purpose of creating Communist Front organizations.

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(f) Urge Communist Party members to protest to their Congressmen against the passage of an anti-strike bill.

(g) Instruct Communist Party members to obtain recruits for the said Party.

(h) Counsel and instruct Communist Party members to sow resentment and discontent among Negroes by agitating the question of racial discrimination, to the end that members for said Party might thus be recruited.

1177 (i) Urge Communist Party members to attend study classes to the end that they might improve their knowledge of the doctrines and methods of the said Party.

(j) Distribute among Communist Party members tickets to a showing of the Soviet film "Great Beginning."

(k) In the capacity of Branch Organizer (Branch F. 2 of the Sixth Assembly District) of the said Communist Party, counsel and instruct divers Party members concerning a plan, policy and program of the said Party having for its purpose (1) disintegration of the morale of Military Forces of the United States; (2) teaching the principles of communism to men in said Military Forces; and (3) recruiting members for the Communist Party from the ranks of said Military Forces, to the end that the Communist Party might gain control thereof and thus bring about a revolt against the Capitalist System;

all of which was well known to the said defendant at the time he made the aforesaid false and fraudulent statement and representation.

Contrary to the statute in such cases made and provided (Section 80, Title 18 U. S. C.) and against the peace and dignity of the United States of America.

COUNT IV.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present;

That on or about the twenty-ninth day of July in the year 1942 at Washington in the District of Columbia and within the jurisdiction of this court;

1178 CARL ALDO MARZANI,
alias TONY WHALES,

the defendant herein, whose more full, true and correct name is to the Grand Jurors unknown and who on and after March 7, 1942 was employed, on a temporary basis subject to a character and fitness investigation, by the Office of the Coordinator of Information and by its successor, the Office of Strategic Services, both of which offices were agencies of the United States having jurisdiction of matters concerning the security and welfare of the United States during a period of war, and who, in a civilian capacity, was so employed (by the Office of Strategic Services) on or about July 29, 1942, did wilfully, unlawfully, and feloniously make a false and fraudulent statement and representation in a matter within the jurisdiction of the Federal Bureau of Investigation, an agency of the United States, said matter being an investigation of the character and fitness of said CARL ALDO MARZANI for employment by the Office of the Coordinator of Information and the Office of Strategic Services, which said investigation was conducted by the said Federal Bureau of Investigation pursuant to a request by the said Office of the Coordinator of Information under the authority of statutes, rules and regulations of the United States, and executive orders of the President of the United States; that is to say;

That on or about July 29, 1942, in the city and district aforesaid, in response to a question propounded by a duly authorized agent of the said Federal Bureau of Investigation during the course of and pursuant to the aforesaid character and fitness investigation, the said CARL ALDO MARZANI falsely stated and represented that he had never participated in any of the activities of the Communist Party, which said statement and representation, as the defendant then and there well knew, was false and fraudulent in this, to-wit; that during the years 1940 and 1941 at divers times and places in the City of New York, New York,

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1179 the said CARL ALDO MARZANI did, in fact, participate in activities of the said Party as alleged in subparagraphs (a) to (k), inclusive, in count three of this indictment, which said subparagraphs are hereby realleged and by reference incorporated herein.

Contrary to the statute in such cases made and provided (Section 80, Title 18 U. S. C.) and against the peace and dignity of the United States of America.

COUNT V.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present;

That on or about the twenty-third day of November in the year 1942 at Washington in the District of Columbia and within the jurisdiction of this Court;

CARL ALDO MARZANI,
alias TONY WHALES,

the defendant herein, whose more full, true and correct name is to the Grand Jurors unknown and who on and after March 7, 1942 was employed, on a temporary basis subject to a character and fitness investigation, by the Office of the Coordinator of Information and by its successor, the Office of Strategic Services, both of which offices were agencies of the United States having jurisdiction of matters concerning the security and welfare of the United States during a period of war, and who, in a civilian capacity, was so employed (by the Office of Strategic Services) on or about November 23, 1942, did wilfully, unlawfully and feloniously make a false and fraudulent statement and representation in a matter within the jurisdiction of the Civil Service Commission, an agency of the United States, said matter being an investigation of the character and fitness of the said CARL ALDO MARZANI for employment by the Office of the Coordinator of Infor-

mation and the Office of Strategic Services which
1180 said investigation was conducted by the said Civil Service Commission pursuant to a request by the said Office of the Coordinator of Information under the authority of statutes, rules and regulations of the United States, and executive orders of the President of the United States; that is to say;

That on or about November 23, 1942, in the city and district aforesaid, in response to a question propounded by a duly authorized representative of the said Civil Service Commission during the course of and pursuant to the aforesaid character and fitness investigation the said CARL ALDO MARZANI falsely stated and represented that he had never used the name or been known as TONY WHALES, and that he had never used or been known by any similar name, which said statement and representation was false and fraudulent in this, to-wit; that the said CARL ALDO MARZANI had, in fact, adopted and used the name TONY WHALES, was known by said name in the Communist Party and under the same name was a member and worker in the said Party in New York City during the years 1940 and 1941, all of which was well known to the said defendant at the time he made the aforesaid false and fraudulent statement and representation.

Contrary to the statute in such cases made and provided (Section 80, Title 18, U. S. C.) and against the peace and dignity of the United States of America.

COUNT VI.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present;

That on or about the twenty-third day of November in the year 1942 at Washington in the District of Columbia and within the jurisdiction of this Court;

CARL ALDO MARZANI,
alias TONY WHALES,

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1181 the defendant herein, whose more full, true and correct name is to the Grand Jurors unknown and who on and after March 7, 1942 was employed on a temporary basis subject to a character and fitness investigation, by the Office of the Coordinator of Information and by its successor, the Office of Strategic Services, both of which offices were agencies of the United States having jurisdiction of matters concerning the security and welfare of the United States during a period of war, and who, in a civilian capacity, was so employed (by the Office of Strategic Services) on or about November 23, 1942, did wilfully, unlawfully and feloniously make a false and fraudulent statement and representation in a matter within the jurisdiction of the Civil Service Commission, an agency of the United States, said matter being an investigation of the character and fitness of said CARL ALDO MARZANI for employment by the Office of the Coordinator of Information and the Office of Strategic Services, which said investigation was conducted by the said Civil Service Commission pursuant to a request by the said Office of the Coordinator of Information under the authority of statutes, rules and regulations of the United States, and executive orders of the President of the United States; that is to say;

That on or about November 23, 1942, in the city and district aforesaid, in response to a question propounded by a duly authorized agent of the said Civil Service Commission during the course of and pursuant to the aforesaid character and fitness investigation, the said CARL ALDO MARZANI falsely stated and represented that he had never been a member of the Communist Party, which statement and representation was false and fraudulent in this, to-wit; that the said CARL ALDO MARZANI was in fact a member of the said Communist Party (Sixth Assembly

1182 District, New York, New York,) during the years 1940 and 1941, all of which was well known to the said defendant at the time he made the aforesaid false and fraudulent statement and representation.

Contrary to the statute in such cases made and provided (Section 80, Title 18 U. S. C.) and against the peace and dignity of the United States of America.

COUNT VII.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present;

That on or about the twenty-third day of November in the year 1942 at Washington in the District of Columbia and within the jurisdiction of this Court;

CARL ALDO MARZANI,
alias TONY WHALES,

the defendant herein, whose more full, true and correct name is to the Grand Jurors unknown and who on and after March 7, 1942 was employed, on a temporary basis subject to a character and fitness investigation, by the Office of the Coordinator of Information and by its successor, the Office of Strategic Services, both of which offices were agencies of the United States having jurisdiction of matters concerning the security and welfare of the United during a period of war, and who, in a civilian capacity, was so employed (by the Office of Strategic Services) on or about November 23, 1942, did wilfully, unlawfully, and felouiously make a false and fraudulent statement and representation in a matter within the jurisdiction of the Civil Service Commission, an agency of the United States, said matter being an investigation of the character and fitness of said CARL ALDO MARZANI for employment by the Office of the Coordinator of Information and the Office of Strategic Services which said investigation was conducted by the said Civil Service Commission pursuant to
1183 a request by the said Office of the Coordinator of Information under the authority of statutes, rules and regulations of the United States, and executive orders of the President of the United States; that is to say;

That on or about November 23, 1942, in the city and district aforesaid, in response to a question propounded by a duly authorized agent of the said Civil Service Commis-

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sion during the course of and pursuant to the aforesaid character and fitness investigation, the said CARL ALDO MARZANI falsely stated and represented that he had never made any speeches against conscription, which said statement and representation was false and fraudulent in this, to-wit; that the said CARL ALDO MARZANI did in fact speak at various public gatherings advocating peace mobilization and urging his listeners to bring pressure upon their Congressmen and Senators for the purpose of defeating legislation for military conscription then pending before the Congress of the United States, and the said CARL ALDO MARZANI did in fact speak at various meetings of the Communist Party (Branch F. 2, Sixth Assembly District) urging said Party members to form delegations and visit their Congressmen for the purpose of protesting the enactment of the military conscription bill then pending before the said Congress, all of which was well known to the said defendant at the time he made the aforesaid false and fraudulent statement and representation.

Contrary to the statute in such cases made and provided (Section 80, Title 18 U. S. C.) and against the peace and dignity of the United States of America.

COUNT VIII.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present;

1184 That on or about the twentieth day of April in the year 1943, at Washington in the District of Columbia and within the jurisdiction of this Court;

CARL ALDO MARZANI,
alias TONY WHALES,

the defendant herein, whose more full, true and correct name is to the Grand Jurors unknown, and who on and after March 7, 1942 was employed, on a temporary basis subject to a character and fitness investigation, by the Of-

fice of the Coordinator of Information and by its successor, the Office of Strategic Services, both of which offices were agencies of the United States having jurisdiction of matters concerning the security and welfare of the United States during a period of war, and who, in a civilian capacity, was so employed (by the Office of Strategic Services) on or about April 20, 1943, did wilfully, unlawfully and feloniously make a false and fraudulent statement and representation in a matter within the jurisdiction of the Civil Service Commission, an agency of the United States, said matter being an investigation of the character and fitness of the said CARL ALDO MARZANI for employment by the Office of the Coordinator of Information and the Office of Strategic Services which said investigation was conducted by the said Civil Service Commission pursuant to a request by the said Office of the Coordinator of Information under the authority of statutes, rules and regulations of the United States, and executive orders of the President of the United States; that is to say;

That on or about April 20, 1943, in the city and district aforesaid, in response to a question propounded by a duly authorized representative of the said Civil Service Commission during the course of and pursuant to the aforesaid character and fitness investigation the said CARL ALDO MARZANI falsely stated and represented that he had never used the name or been known as TONY
1185 WHALES, which said statement and representation was false and fraudulent in this, to-wit; that the said CARL ALDO MARZANI had, in fact, adopted and used the name TONY WHALES, was known by said name in the Communist Party and under the said name was a member and worker in the said Party in New York City during the years 1940 and 1941, all of which was well known to the said defendant at the time he made the aforesaid false and fraudulent statement and representation.

Contrary to the statute in such cases made and provided

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(Section 80, Title 18 U. S. C.) and against the peace and dignity of the United States of America.

COUNT IX.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present;

That on or about the twentieth day of April in the year 1943 at Washington in the District of Columbia and within the jurisdiction of this Court;

CARL ALDO MARZANI,
alias TONY WHALES,

the defendant herein, whose more full, true and correct name is to the Grand Jurors unknown and who on and after March 7, 1942 was employed, on a temporary basis subject to a character and fitness investigation, by the Office of the Coordinator of Information and by its successor, the Office of Strategic Services, both of which offices were agencies of the United States having jurisdiction of matters concerning the security and welfare of the United States during a period of war, and who, in a civilian capacity, was so employed (by the Office of Strategic Services) on or about April 20, 1943, did wilfully, unlawfully, and feloniously make a false and fraudulent statement and representation in a matter within the jurisdiction of the
1186 Civil Service Commission, an agency of the United States, said matter being an investigation of the character and fitness of said CARL ALDO MARZANI for employment by the Office of the Coordinator of Information and the Office of Strategic Services, which said investigation was conducted by the said Civil Service Commission pursuant to a request by the said Office of the Coordinator of Information under the authority of statutes, rules and regulations of the United States, and executive orders of the President of the United States; that is to say;

That on or about April 20, 1943, in the city and district

aforesaid, in response to a question propounded by a duly authorized agent of the said Civil Service Commission during the course of and pursuant to the aforesaid character and fitness investigation, the said CARL ALDO MARZANI falsely stated and represented that he had never made any speeches against conscription, which said statement and representation was false and fraudulent in this, to-wit; that the said CARL ALDO MARZANI during the year 1940, did, in fact, in the City of New York, New York, speak at various public gatherings advocating peace mobilization and urging his listeners to bring pressure upon their Congressmen and Senators for the purpose of defeating legislation for military conscription then pending before Congress of the United States, and the said CARL ALDO MARZANI during the year 1940, did, in fact, in the City of New York, speak at various meetings of the Communist Party (Branch F. 2, Sixth Assembly District) urging said Party members to form delegations and visit their Congressmen for the purpose of protesting the enactment of the military conscription bill then pending before the said Congress, all of which was well known to the said defendant at the time he made the aforesaid false and fraudulent statement and representation.

Contrary to the statute in such cases made and provided (Section 80, Title 18 U. S. C.) and against the peace and dignity of the United States of America.

1187 COUNT X.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present;

That on or about the first day of June in the year 1946, at Washington in the District of Columbia and within the jurisdiction of this Court:

CARL ALDO MARZANI,
alias TONY WHALES,

the defendant herein, whose more full, true and correct

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name is to the Grand Jurors unknown, and who was transferred to the State Department of the United States from the Office of Strategic Services on or about September 20, 1945, on which date certain of the functions and personnel of the said Office of Strategic Services were, by Executive Order No. 9621, transferred to and consolidated within the said State Department and who on and after September 20, 1945, was employed in a civilian capacity by the said State Department in the Interim Research and Intelligence Service, and in the Presentation Division of the Office of Departmental Administration, did willfully, unlawfully and feloniously make a false and fraudulent statement and representation in a matter within the jurisdiction of the said State Department of the United States, said matter being an inquiry into the character and fitness of the said CARL ALDO MARZANI (and other personnel transferred to the State Department by Executive Order No. 9621) for continued employment by the said State Department; that is to say;

That on or about June 1, 1946, in the city and district aforesaid, during a conference with a duly authorized officer of the said State Department, who was then and there inquiring into the character and fitness of the said defendant for continued employment by the said Department for the purpose of making recommendations to the said Department concerning the matter of continuing or terminating the aforesaid employment, the said CARL ALDO MARZANI falsely stated and represented that he had never been a member of the Communist Party, which said state-
1188 ment and representation was false and fraudulent in this, to-wit; that the said CARL ALDO MARZANI was in fact a member of the said Communist Party (Sixth Assembly District, New York, New York) during the years 1940 and 1941, all of which was well known to the said defendant at the time he made the aforesaid false and fraudulent statement and representation.

Contrary to the statute in such cases made and provided (Section 80, Title 18 U. S. C.) and against the peace and dignity of the United States of America.

COUNT XI.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present;

That on or about the first day of June in the year 1946, at Washington in the District of Columbia and within the jurisdiction of this Court;

CARL ALDO MARZANI,
alias TONY WHALES,

the defendant herein, whose more full, true and correct name is to the Grand Jurors unknown, and who was transferred to the State Department of the United States from the Office of Strategic Services on or about September 20, 1945, on which date certain of the functions and personnel of the said Office of Strategic Services were, by Executive Order No. 9621, transferred to and consolidated within the said State Department, and who on and after September 20, 1945, was employed in a civilian capacity by the said State Department in the Interim Research and Intelligence Service, and in the Presentation Division of the Office of Departmental Administration, did wilfully, unlawfully, and feloniously make a false and fraudulent statement and representation in a matter within the jurisdiction of the said State Department of the United States, said matter being an inquiry into the character and fitness of the said
1189 CARL ALDO MARZANI (and other personnel transferred to the State Department by Executive Order No. 9621) for continued employment by the said State Department; that is to say;

That on or about June 1, 1946, in the city and district aforesaid, during a conference with a duly authorized officer of the said State Department, who was then and there

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inquiring into the character and fitness of the said defendant for continued employment by the said Department for the purpose of making recommendations to the said Department concerning the matter of continuing or terminating the aforesaid employment, the said CARL ALDO MARZANI falsely stated and represented that he had never used the name or been known as TONY WHALES, which said statement and representation was false and fraudulent in this, to-wit; that the said CARL ALDO MARZANI had, in fact, adopted and used the name TONY WHALES, was known by said name in the Communist Party and under the same name was a member and worker in the said Party in New York City during the years 1940 and 1941, all of which was well known to the said defendant at the time he made the aforesaid false and fraudulent statement and representation.

Contrary to the statute in such cases made and provided (Section 80, Title 18, U. S. C.) and against the peace and dignity of the United States of America.

TRUE BILL:

HELEN M. HOFFMAN
Foreman.

GEORGE MORRIS FAY
United States Attorney.

THERON LAMAR CAUDLE
Assistant Attorney General of the Criminal Division.

JOHN M. KELLEY, JR.
Special Assistant to the Attorney General.

• • • •

1190 Come as well the Attorney of the United States, as the defendant in proper person, and by his attorney, Charles E. Ford, Esquire; whereupon the defendant being arraigned upon the indictment, the reading whereof he specifically waives, pleads not guilty thereto, and for trial puts himself upon the country and the Attorney of the United States doth the like; and thereupon by consent of the United States Attorney the defendant is granted

leave within Fifteen (15) days to withdraw said plea and demur to, or move to quash the said indictment, or otherwise plead as he may be advised; and thereupon bond is fixed by the Court in this case at Two Thousand, Five Hundred ($2,500.00) Dollars.

• • • •

1191 The defendant moves that the indictment be dismissed on the following grounds:

(1) The indictment does not state facts sufficient to constitute an offense against the United States.

(2) The indictment was not found within three years next after the alleged offense was committed.

Dated, February 18th, 1947.

CHARLES E. FORD,
Attorney for Defendant.

• • • •

1192 MEMORANDUM OPINION

Motion to Dismiss.

Theron L. Caudle, Assistant Attorney General,
George M. Fay, United States Attorney,
John M. Kelley, Jr., Special Assistant to
the Attorney General, Washington, D. C.,
Attorneys for plaintiff,

Charles E. Ford, Washington, D. C.,
Attorney for defendant.

Under an indictment returned in this jurisdiction on January 17, 1947, the defendant is charged in eleven counts with violation of Section 80, Title 18, United States Code.

It appears from the record now before the Court that defendant was employed on and after March 7, 1942, on a temporary and conditional basis, subject to character and

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fitness investigation, by the Office of Coordinator of Information and its successor, Office of Strategic Services, and on September 20, 1945, was transferred to the Department of State.

In the first nine counts of the indictment it is charged that on separate occasions, to two different investigative authorities, defendant "did wilfully, unlawfully and feloniously make a false and fraudulent statement and representation" to the effect that he was not a member of the Communist Party; that he had never attended any of its meetings, never contributed any services to the Communist Party, never participated in any of its activities, never made any speeches against conscription; and that he had never used or been known by the name of Tony Whales or any similar name.

1193 The last two counts of the indictment cover similar offenses except that the false and fraudulent statements are alleged to have been made on June 1, 1946, when defendant was being interrogated by a State Department officer.

Defendant has moved to dismiss the indictment on the grounds: (1) that it does not state facts sufficient to constitute an offense against the United States, and (2) that it was not found within three years next after the alleged commission of the offense. Concededly this latter applies only to counts one to nine, inclusive, since the other two counts are well within the three-year statutory period prescribed by Section 582 of Title 18, United States Code.

Briefly summarized, the points advanced in support of the motion are as follows:

(1) The agencies referred to in the several counts of the indictment (Federal Bureau of Investigation as to Counts I to IV, inclusive; Civil Service Commission as to Counts V to IX, inclusive; and the Department of State as to Counts X and XI) were without power or authority

to make the inquiries as to which defendant is alleged to have made false statements.

(2) The questions propounded to the defendant were unauthorized, illegal, concerned his private, personal, political activities, and were without the jurisdiction of the agencies involved.

(3) The questions propounded to the defendant were not pertinent to the character and fitness investigation of the defendant as an employee of the United States Government.

(4) The quetions asked of the defendant were not material or relevant to the character and fitness investigation.

(5) The alleged false statements did not serve to conceal any illegal or prohibited acts.

(6) The indictment fails to allege any specific intent on the part of defendant to defraud the government.

1194 (7) The language of the statute (18 U. S. C. 80), insofar as applicable to defendant under the circumstances, is so vague and indefinite as to be repugnant to the Fifth Amendment to the Constitution.

(8) The indictment violates the Fifth and Sixth Amendments to the Constitution as it fails to inform defendant of the nature and cause of the accusation.

(9) The indictment fails to state facts sufficient to constitute a crime.

(10) to (16), inclusive: The indictment violates the Fifth Amendment to the Constitution since it charges the same offense in a multiplicity of counts.

(17) Counts one to nine of the indictment are barred by the statute of limitations (18 U. S. C. 582).

(18) Conviction hereunder would pervert the legislative intent in enactment of the statute (18 U. S. C. 80) and deprive defendant of his constitutional rights.

These points will be dealt with in the order listed:

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(1) Authority of Federal Bureau of Investigation to investigate defendant:

In addition to its broad general investigative powers (5 U. S. C. 300) the Congress of the United States specifically vested this agency of the government with authority to investigate employees of the Federal Government "who are members of subversive organizations or advocate the overthrow of the Federal Government by force." (Appropriation Acts of June 28, 1941, Public Law 135, 77th Congress, and July 2, 1942, Public Law 644, 77th Congress.)

Furthermore, the Congress specifically provided in the so-called Hatch Act (53 Stat. 1148, 18 U. S. C. 61i) that:

"It shall be unlawful for any person employed in
1195 in any capacity by any agency of the Federal Government, whose compensation, or any part thereof, is paid from funds authorized or appropriated by any Act of Congress, to have membership in any political party or organization which advocates the overthrow of our constitutional form of government in the United States."

(b) Authority of Civil Service Commission to investigate defendant:

In view of the recent holding in this Court in the case of *Friedman v. Schwellenbach,* 65 Fed. Supp. 254, affirmance of which by our Court of Appeals (Case No. 9305) on December 16, 1946, was approved by the Supreme Court in denying certiorari on March 17, 1947, it would appear that no further discussion on this point is necessary.

(c) Authority of State Department officer to interrogate defendant:

Without further elaboration, it is sufficient to point out that the Appropriation Act for the State Department for the fiscal year ending June 30, 1946,* provides:

"No part of any appropriation contained in this Act shall be used to pay the salary or wages of any person who advocates, or who is a member of an organization that advo-

cates, the overthrow of the Government of the United States by force or violence."

And, in further answer to this objection on the part of defendant, what better source of information would be available to an officer of the executive department than the individual himself?

(2), (3), (4). In view of the authority of the agencies involved, the Court holds as a matter of law that the questions propounded of defendant were pertinent, relevant, material, and well within the scope of the investigation as to the defendant's character and fitness, for they had a direct bearing thereon. This is doubly true in time of war, and particularly in view of the character of the agencies involved and the nature of the work with which they were charged.

(5) We are not concerned here with whether or not the defendant was a member of the Communist Party, parti-

*Public Law 61, 79th Congress.

cipated in its activities, or used an alias. That is a
1196 matter of proof for the trial. It is true that membership in the Communist Party is not in and of itself unlawful. A comparable contention was advanced in *United States* v. *Barra,* (C. C. A. 2, 1945) 149 Fed. (2d) 489, and decided adversely to defendant. In that case the Court stated that once it appears that the department "has colorable authority to do what it is doing" an accused under the statute (18 U. S. C. 80) cannot justify his falsehood by a collateral attack upon the authority. The authorities in support of this ruling are too numerous to enumerate.

(6) While the question of intent is a matter for the trial court (*United States* v. *DeLorenzo,* 151 Fed. (2d) 122, C. C. A. 2, 1945), it should be borne in mind that the indictment charges the defendant with "wilfully, unlawfully and feloniously" making "false and fraudulent" statements. The word "feloniously" itself, in an indictment, means "with criminal intent". *Stephens* v. *United*

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States, 262 Fed. 957; Milller on Criminal Law, Ch. 5, Sec. 20(f). This very point was before the court in the case of *Bank of Montreal* v. *Thayer,* 7 Fed. 622, in which the complaint alleged certain representations were made "wrongfully, fraudulently, and falsely." The court there said:

"It is said that a fraudulent intent is not alleged; but it is difficult to see how representations as to a matter of fact can be wrongful, fraudulent, and false, without they are made with a fraudulent intent. It is certainly necessary to prove the intent, and of course it must be alleged, but no form of words is necessary. If the terms employed by the pleader, taken in their ordinary signification, necessarily include the idea of a fraudulent intent, that is enough. We must give to the term 'fraudulently,' as found in the petition, the meaning which the law gives it, and which attaches to it in common usage, to-wit, a deliberately-planned purpose and intent to deceive and thereby to gain an unlawful advantage. After stating what representations were made with sufficient particularity, it is enough to aver that they were wrongful, false, and fraudulent. It is not necessary in such a pleading to define the meaning of these terms; and to say that the representations were made with intent to deceive, would add nothing to the allegation that they were falsely and fraudulently made."

1197 (7), (8), (9). This indictment more than adequately charges the crime, states facts sufficient to constitute a crime, and apprises defendant of the charges against him, thereby preserving his constitutional guarantees. *United States* v. *Meyer,* 140 Fed. (2d) 652 (C. C. A. 2, 1944).

(10) to (16), inclusive: Each count of the indictment charges an offense different from the others either from a standpoint of time when the alleged false and fraudulent statements were made or with respect to different governmental agencies. The test of double jeopardy through a

multiplicity of counts is whether a conviction on one count and an acquittal on another would bring about a contradiction on the face of the verdict.

(17) The first nine counts of this indictment, which was returned January 17, 1947, charge the making of false and fraudulent statements by defendant between July 29, 1942, and April 20, 1943. If the general statute of limitations (18 U. S. C. 582) applies, concededly the prosecution as to these counts is barred.

It is the government's claim that the running of the statute was, on August 24, 1942, tolled by the enactment on that date of Section 590a of Title 18, United States Code, which covered, inter alia, offenses involving "defrauding or attempts to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner."

The defendant's argument, in brief, is that the suspension statute (18 U. S. C. 590a) cannot be distorted so as to make it applicable to any crime of which fraud in the ordinary sense is not an integral part (*United States* v. *Noveck*, (1926) 271 U. S. 201; *United States* v. *McElwain*, (1926) 272 U. S. 633; *United States* v. *Scharton*, (1932) 285 U. S. 518), and, since the suspension statute was enacted as a part of the Contract Settlement Act of 1944 (58 Stat. 667), it necessarily relates to frauds involv-
1198 ing pecuniary or property loss to the United States.

This indictment is based solely on 18 U. S. C. 80, which is a fraud statute, and the case is distinguishable from those heretofore passed upon wherein an attempt was made to apply an earlier suspension statute to prevent the tolling of the statute of limitations to separate and distinct crimes where fraud was not an element of the offense as defined by the penal statute on which the indictment was based.

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The pertinent portions of the applicable statutes read as follows:

18 *U. S. C.* 80: "***whoever shall***make or cause to be made any false or fraudulent statements or representations *** in any matter within the jurisdiction of any department or agency of the United States *** shall be fined not more than $10,000 or imprisoned not more than ten years, or both."

18 *U. S. C.* 582: "No person shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section 584, of this title (referring to crimes under revenue or slave trade laws) unless the indictment is found, or the information is instituted within three years next after such offense shall have been committed."

18 *U. S. C.* 590a: "The running of any existing statute of limitations applicable to any offense against the laws of the United States (1) involving defrauding or attempts to defraud the United States or any agency thereof whether by conspiracy or not, and in any manner *** shall be suspended until three years after the termination of hostilities in the present war ***."

Following the decision of the Supreme Court in *United States* v. *Gilliland,* (1941) 312 U. S. 86, 93, it cannot be successfully contended that 18 U. S. C. 80 relates only to fraudulent causing of pecuniary or property loss to the government. Therein, Chief Justice Hughes declared:

"The amendment (Act of June 18, 1934, 48 Stat. 996) eliminated the words 'cheating and swindling' and broadened the provision so as to leave no adequate basis for the limited construction which had previously obtained. The statute was made to embrace false and fraudulent
1199 statements or representations where these were knowingly and wilfully used in documents or affidavits 'in any matter within the jurisdiction of any department or agency of the United States.' In this there was no restriction to cases involving pecuniary or property loss

to the government. The amendment indicated the congressional intent to protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described. We see no reason why this apparent intention should be frustrated by construction." 1/2/

Section 590a of Title 18 of the United States Code was enacted August 24, 1942, as a separate and distinct Act of Congress (Public Law 706, 77th Congress, 56 Stat. 747), to suspend temporarily the running of statutes of limitations applicable to offenses involving defrauding or attempts to defraud the United States or any agency thereof. Section 19(b) of the Contract Settlement Act, enacted July 1, 1944 (Public Law 395, 78th Congress, 58 Stat. 649, 667), merely amended the 1942 act by enlarging it specifically to include any offense under the Contract Settlement Act and by extending the time for suspension of the statutes of limitations. Section 28 of the Surplus Property Act of 1944, enacted October 3, 1944 (Public Law 457, 78th Congress, 58 Stat. 765, 781), again amended the 1942 act by making it applicable to a further class of offenses, those under the Surplus Property Act. It is significant to point out that neither of these amendments changed the wording of the statute here involved, namely:

"**** defrauding or attempts to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner ***."

1/ See also *U. S.* v. *Mellon*, 96 Fed. (2d) 462 (C. C. A. 2, 1938), certiorari denied 304 U. S. 586: *U. S.* v. *Presser*, 99 Fed. (2d) 819 (C. C. A. 2, 1938); *U. S.* v. *Swisher*, 109 Fed. (2d) 1000 (C. C. A. 10, 1940); *U. S.* v. *Agnew*, E. D. Pa., 1947, Cr. No. 13975.

2/ See also *U. S. v. Zavala*, 139 Fed. (2d) 830, 831 (C. C. A. 2, 1944), which holds that 18 U. S. C. 80 covers the use of a document to defraud and the use of any false statement, oral or written, as to any matter within the jurisdiction of any department or agency of the United States.

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Its application, therefore, to the false statements embraced in this indictment can hardly be questioned.

1200 It cannot, therefore, be successfully argued that these amendments limited the scope of the suspension statute to frauds involving pecuniary or property loss to the government.

While it is true that the amendments to the original act are to be found in the Contract Settlement Act and the Surplus Property Act, this fact is neither significant nor controlling, for both of the latter acts contain other provisions that are not germane to the subject matter of either contract settlements or surplus property.

In contrast with the 1942 act, the suspension of the running of the statutes of limitations for similar offenses enacted after World War I, discussed at length by counsel for defendant, was enacted as a proviso appended to R. S. §1044 (18 U. S. C. 582, 42 Stat. 220), the section dealing with general limitations on offenses not capital. According to rules of construction, a proviso containing exceptions to a general policy is to be strictly construed; but it is important to note that here we are not dealing with a proviso clause—on the contrary, we are concerned with the main body of the act itself.

One of the authorized functions of governmental departments and agencies, particularly in time of war, is to see that their employees are loyal to our democratic form of government and to no other. For an employee to falsely state that he was not a member of the Communist Party amounts to a deceptive practice which, as Justice Hughes stated in *United States* v. *Gilliland,* supra, was exactly what was encompassed within the amendment of June 18, 1934.

As to whether or not fraud is inherent in false answers given by a government employee in connection with his employment, see *Palmer* v. *Colladay,* 18 App. D. C. 426, wherein it is stated:

"The Civil Service Commission is a legal agency of the

United States, created by Act of Congress; and through it the President undertakes to find and appoint such persons as may best promote the efficiency of the civil service; and to that end regulations are prescribed by means of which the age, health, *character*, knowledge, and ability for the branch of service into which he seeks to enter, of each candidate, may be fully ascertained.

"If falsehoods are imposed upon the persons charged with the duty of ascertaining these qualifications, and made to take the place of facts, then the United States is defrauded, is deprived by deceit of the knowledge justly due to its officers in the proper discharge of its business, and it is thereby liable to obtain a less efficient employee." (Emphasis supplied.)

See also *United States* v. *Curley*, 122 Fed. 738, certiorari denied 195 U. S. 628.

In *Burdick* v. *Post*, 12 Barb. 168, 186, it is said that "to defraud" is to withhold from another that which is justly due him or to deprive him of a right by deception or artifice, and Bouvier adopts this definition. Thus it will be seen that the word "defraud" in legal acceptation refers to rights, as well as property and money.

"Moreover, when the word 'defraud' is used in connection with the government and the law itself, it naturally and necesarily has a broader and a different meaning than when used in connection with personal rights or in connection with individual rights of property." *Curley* v. *United States*, 130 Fed. 1, 11.

(18) Where there is no ambiguity in the statute, it is unnecessary to consider legislative intent.

In the light of the foregoing, defendant's Motion to Dismiss is denied.

R. B. KEECH
Associate Justice.

April 25, 1947.

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673 Mr. Kelley. May it please the Court, the Government rests.

Mr. Ford. May we approach the bench?

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675 Now, at this time I want to renew all the motions and all the objections that I heretofore made in the case.

The Court. Very well, sir.

Mr. Ford. And at this time I move, your Honor, to instruct the jury to bring in a judgment of not guilty.

The Court. I will deny it at this time, sir.

• • • •

1120 Mr. Ford. At this time, may it please your Honor, I move for a judgment of acquittal on the entire indictment and each separate count thereof, on the ground that the charges in the indictment have not been proven, and on the ground that no intent has been shown as required by the offenses charged in each count of the indictment.

Secondly, I move for judgment of acquittal on counts 1 to 9 because they are barred by the statute of limitations.

Third, I move for judgment of acquittal and the dismissal of the indictment on all the grounds set forth in the motion heretofore filed for the dismissal of the indictment prior to the trial.

Fourth, I move that the Government now be required to elect between counts 5, 8, and 11, counts 1 and 6 and 10, counts 7 and 9, and counts 3 and 4, because they charge the same offense as against each other.

Fifth, I make a motion for the withdrawal of a
1121 juror and for your Honor to declare a mistrial because of all of the evidence, and each of it, introduced by the Government concerning the defendant's wife.

Sixth, I move for the withdrawal of a juror and a mistrial because of the evidence introduced by the Government regarding the defendant Marzani and the Board of Public Welfare, and because of the testimony offered by

the Government by the witness Panuch, who was permitted to state that he told Marzani that he made a false statement under oath to the W. P. A.

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1122 I move for a mistrial and withdrawal of a juror, because the Government was permitted to cross-examine a character witness, to wit, General Greenbaum, before the defendant's counsel completed his direct examination; coupled up with the fact that I was not permitted to preliminarily examine the witness Drew about the integrity of all of his records before he was permitted to use and refresh his recollection from the same; on the theory that after he had testified and said he refreshed his recollection, it was too late, because the matter of his reports, which he recited, was then in evidence and heard by the jury.

Eighth, I move for a mistrial because of the use and the evidence adduced by the Government relative to the nominating petitions as they are not the basis of any charge contained in the indictment against the defendant.

Then I repeat all motions previously made, in-
1123 cluding those where evidence attempted to be offered by the defendant was excluded by the Court, and all motions where evidence was offered by the Government and objections were overruled, and all motions that may appear in the record regarding mistrials, including the objections made to testimony which was testimony offered by the Government on the basis that the Government assured the Court that they would connect up that evidence; that in those places where that promise was made, it was not kept, and they were not connected up.

• • • •

1148 *Proceedings*

The Court. Suppose you gentlemen approach the bench a minute.

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(Counsel for both sides approached the bench and conferred with the Court, in a low tone of voice, as follows:)

The Court. I think it would be well for me to state at this time that I considered the motions made yesterday by defense counsel, and I am now denying them.

Mr. Ford. May the record show I take an exception?

• • • •

1150 *Charge to the Jury*

The Court (Keech, J.). Ladies and gentlemen of the jury, the defendant, Carl Aldo Marzani, is before the Court on an indictment charging violation of certain provisions of Title 18, Section 80, of the United States Code. The indictment is in eleven counts. The substance thereof is that the defendant did make certain false and fraudulent statements, on the dates shown, and in the District of Columbia, to duly constituted government authorities, namely, the Federal Bureau of Investigation, the Civil Service Commission, and the Department of State, in connection with character and fitness examination of the defendant, all of which was well known to the defendant, and that the said false and fraudulent statements were wilfully made.

It is now your duty to determine whether the defendant is guilty or not guilty of the charges on which he is being tried. It is my duty to instruct you as to the law applicable to this case and that must govern you in your deliberations and in arriving at your conclusion. You
1151 are bound and obligated to follow the Court's instructions as to the law, but you, ladies and gentlemen of the jury, are the sole judges of the facts, and you must determine the facts for yourselves, solely on the basis of the relevant evidence adduced before you.

The Court is permitted to summarize and discuss the evidence in order to assist the jury in arriving at its conclusion; but, if your recollection of the evidence differs in

any respect from the Court's recollection, then your recollection must prevail, because the final decision on the facts is entirely within your province, while my instructions are binding on you only as to the law.

The fact that a defendant has been indicted and is charged with a crime is not in itself to be taken as an indication of guilt, and no inference is to be drawn against him from that fact, because an indictment is merely the machinery and the procedure that the law provides for bringing a defendant before the Court and placing him on trial. That is the only function of an indictment.

Every defendant in a criminal case is presumed to be innocent, and this presumption of innocence attaches to the defendant throughout the trial. The burden of proof is on the Government to prove the defendant guilty beyond a reasonable doubt, and unless the Government sustains this burden and proves each essential element beyond a reasonable doubt that he committed the crime with
1152 which he is charged you must find him not guilty.

But, you might ask, what is meant by "a reasonable doubt". It does not mean any doubt whatsoever. Proof beyond a reasonable doubt is proof to a moral certainty and not necessarily proof to an absolute or a mathematical certainty. By a reasonable doubt, as its name implies, is meant a doubt based on reason, not any whimsical or capricious conjecture. It is a doubt which is reasonable in view of all the evidence. If, after impartial comparison and consideration of all the evidence, you can candidly say that you are not satisfied with the guilt of the defendant, you have a reasonable doubt. But, if after such impartial comparison and consideration of all the evidence you can truthfully say that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your personal affairs, then you have no reasonable doubt.

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If you can reconcile the evidence in this case with any reasonable hypothesis consistent with the innocence of the defendant, you should do so; and, in that case your verdict would be "not guilty".

And, I might add at this point, that evidence of good character, taken in conjunction with all the other evidence before you, might be sufficient to create in your minds a reasonable doubt.

1153 In determining whether the Government has established the charge against the defendant beyond a reasonable doubt, you will consider and weigh all the testimony of all the witnesses who have testified before you, including the defendant. You are the sole judges of the credibility of witnesses. In determining whether to believe the testimony of any witness, and in weighing the testimony of any witness, you may consider his demeanor on the stand, his manner of testifying, whether he impresses you as having an accurate memory and recollection, and whether he impresses you as a truth-telling individual.

You are further instructed that while the law makes the defendant a competent witness in this case, yet you have the right to take into consideration his situation and interest in the result of your verdict, and all the circumstances which surround him, and give to his testimony only such weight as in your judgment it is fairly entitled to.

If you should find that any witness wilfully testified falsely as to any material fact, you are at liberty, if you deem it wise to do so, to disregard the entire testimony, or any part thereof, of such witness, except where corroborated by other credible testimony.

The defendant in this case is charged with having made false and fraudulent statements to a government agency and the applicable portion of the statute covering this

1154 offense provides that (and I quote):

"... whoever shall ... make or cause to be made any false or fraudulent statements or representations ...

in any matter within the jurisdiction of any department or agency of the United States . . ."
shall be subjected to certain penalties.

You will note from some of the testimony and the indictment itself that certain of these statements were alleged to have been made four or five years ago. The Court says to you that that is a matter of law which has been resolved by the Court and is, therefore, not for your consideration.

This indictment is in eleven counts and you are required to return a verdict of guilty or not guilty as to each and every count.

COUNT 1 charges the defendant with wilfully, unlawfully, and feloniously making a false and fraudulent statement to an agent of the FBI on July 29, 1942, that he had never been a member of the Communist Party; whereas in fact during the years 1940 and 1941 he was a member of said Communist Party (Sixth Assembly District, New York, New York).

COUNT 2 charges the defendant with wilfully, unlawfully, and feloniously making a false and fraudulent statement to an agent of the FBI on July 29, 1942, that he had never attended any meetings of the Communist Party; whereas in fact he did attend meetings of
1155 the Communist Party in New York City on or about July 22, 1940, July 23, 1940, August 12, 1940, September 3, 1940, October 14, 1940, October 17, 1940, November 25, 1940, December 2, 1940, December 9, 1940, February 11, 1941, February 22, 1941, May 28, 1941, September 22, 1941, and at various other times.

COUNT 3 charges the defendant with wilfully, unlawfully, and feloniously making a false and fraudulent statement to an agent of the FBI on July 29, 1942, that he had never contributed any services to the Communist Party; whereas during the years 1940 and 1941, at divers times and places in the City of New York, New York, he had contributed various services to said Communist Party, such as serving as Branch Organizer and Section Educational

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Director in the Sixth Assembly District, delivering lectures to Communist Party recruit classes on the principles of communism, issuing and collecting Communist Party membership books, composing, editing, publishing and distributing pamphlets in the interest and on behalf of the Communist Party, counseling and advising Communist Party members and recruits with respect to methods and means to be employed in infiltrating divers groups and societies for the purpose of creating Communist Front organizations, urging Communist Party members to protest to their Congressmen against passage of an anti-strike bill, instructing Communist Party members to obtain re-
1156 cruits for said Party, counseling and instructing Communist Party members to sow resentment and discontent among Negroes by agitating the question of racial discrimination, to the end that members for said Party might thus be recruited, urging Communist Party members to attend study classes to the end that they might improve their knowledge of the doctrines and methods of said Party, distributing among Communist Party members tickets to a showing of the Soviet film, "Great Beginning", and in the capacity of Branch Organizer of said Communist Party, counseling and instructing divers Party members concerning a plan, policy, and program of the said Party having for its purpose disintegration of the morale of Military Forces of the United States, teaching the principles of communism to men in said Military Forces, and recruiting members for the Communist Party from the ranks of said Military Forces to the end that the Communist Party might gain control thereof and thus bring about a revolt against the Capitalist System.

COUNT 4 charges the defendant with wilfully, unlawfully, and feloniously making a false and fraudulent statement to an agent of the FBI on July 29, 1942, that he had never participated in any of the activities of the Communist Party; whereas, in fact, during the years 1940 and 1941, at divers times and places in New York City he had

participated in the activities of the Communist Party as described in the previous count.

1157 *COUNT 5* charges the defendant with wilfully, unlawfully, and feloniously making a false and fraudulent statement to an official of the Civil Service Commission on November 23, 1942, that he had never used the name or been known as Tony Whales; whereas in fact he had adopted and used the name Tony Whales, was known by that name in the Communist Party, and under the same name was a member and worker in the said Party in New York City during the years 1940 and 1941.

COUNT 6 charges the defendant with wilfully, unlawfully, and feloniously making a false and fraudulent statement to an official of the Civil Service Commission on November 23, 1942, that he had never been a member of the Communist Party; whereas he was a member of said Communist Party (Sixth Assembly District, New York, New York) during the years 1940 and 1941.

COUNT 7 charges the defendant with wilfully, unlawfully, and feloniously making a false and fraudulent statement to an official of the Civil Service Commission on November 23, 1942, that he had never made any speeches against conscription; whereas he did in fact speak at various public gatherings advocating peace mobilization and urging his listeners to bring pressure upon their Congressmen and Senators for the purpose of defeating legislation for military conscription then pending before the Congress of the United States, and he did in fact speak at

1158 various meetings of the Communist Party (Branch F-2, Sixth Assembly District) urging said Party members to form delegations and visit their Congressmen for the purposeof protesting the enactment of the military conscription bill then pending before the Congress.

COUNT 8 charges the defendant with wilfully, unlawfully, and feloniously making a false and fraudulent statement to an official of the Civil Service Commission on April 20, 1943, that he had never used the name or been

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known as Tony Whales; whereas he had, in fact, adopted and used the name Tony Whales, was known by that name in the Communist Party, and under that name was a member and worker in the Communist Party in New York City during the years 1940 and 1941.

COUNT 9 charges the defendant with wilfully, unlawfully, and feloniously making a false and fraudulent statement to an official of the Civil Service Commission on April 20, 1943, that he had never made any speeches against conscription; whereas during the year 1940 the defendant did, in fact, in the City of New York speak at various public gatherings advocating peace mobilization and urging his listeners to bring pressure upon their Congressmen and Senators for the purpose of defeating legislation for military conscription then pending before the Congress of the United States, and during the year 1940 he did, in fact, in New York City, speak at various meetings of the Communist Party (Branch F-2, Sixth Assembly District) urging said Party members to form
1159 delegations and visit their Congressmen for the purpose of protesting the enactment of the military conscription bill then pending before the Congress.

COUNT 10 charges the defendant with wilfully, unlawfully, and feloniously making a false and fraudulent statement to a duly authorized officer of the State Department on June 1, 1946, that he had never been a member of the Communist Party; whereas defendant was, in fact, a member of the Communist Party (Sixth Assembly District, New York, New York) during the years 1940 and 1941.

COUNT 11 charges the defendant with wilfully, unlawfully, and feloniously making a false and fraudulent statement to a duly authorized officer of the State Department on June 1, 1946, that he had never used the name or been known as Tony Whales; whereas defendant was known by the name Tony Whales in the Communist Party, and under that name was a member and worker in said Party in New York City during the years 1940 and 1941.

In addition, each count alleges that the true facts were then and there well known to the defendant. Each count alleges that the false and fraudulent statement was made at a time when the defendant either was in the employ, or was being transferred, or had been transferred from one agency of the Government to another, when the character and fitness of the defendant were being investigated
1160 in connection with his employment, its termination or continuation of his temporary employment with such agencies.

The indictment further alleges that the matters which weer the subject of the investigations referred to in the 11 counts were within the jurisdiction of a department or agency of the United States, to wit, the Federal Bureau of Investigation, the Civil Service Comission, and the State Department.

I have ruled as a matter of law that it was within the authority of the Office of the Coordinator of Information, Office of Strategic Services, and the State Department to request an investigation of the defendant regarding his character and fitness; and that the Federal Bureau of Investigation, the Civil Service Commission, and the State Department, as a matter of law, had the right to make the investigations in question.

I have also ruled, as a matter of law, that the questions propounded of the defendant by the several agencies of the Government were material to the investigation being conducted.

The Court further finds and instructs you, as a matter of law, that the agencies involved, namely, the Office of Coordinator of Information, and the Office of Strategic Services and the State Department, as its successors, were agencies of the United States having jurisdiction of matters concerning the security and welfare of the United States during a period of war.

1161 Throughout these instructions I have used the terms "fraudulent" and "feloniously". I shall en-

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deavor to explain to you the legal meaning of these terms, as well as the term "fraud", particularly as they are applicable to the statute here involved.

The term "fraud" as applied to this offense is defined in law to be a deception practiced by an individual in connection with any matter within the jurisdiction of any agency or department of the Government. It has a broader meaning where the Government is involved than it does when used in connection with individual rights of property. It is sufficient here to add that if falsehoods are imposed upon persons charged with the duty of ascertaining the qualifications of government employees, then the United States has been subjected to a fraud; that is, it has been deprived by deceit of the knowledge justly due in the proper discharge of its business. I further say to you that pecuniary or monetary loss to the Government is not an element of the offense, so that the Government is not required to prove that the Government has suffered a pecuniary loss in connection with the crime here charged.

So then we come to the meaning of the word "fraudulent". We must give to the term "fraudulent" the meaning the law gives to it, to wit, a deliberately-planned purpose and intent to deceive and thereby gain an unlawful advantage. As you know, one cannot see into the mind of another human being to ascertain his intentions—they can only be gathered from his words and deeds. Intent is an illusive or abstract thing capable of being understood, as I have said, only as a result of observing one's actions or hearing one's utterances. "Intent" as applicable to this case must be found from the evidence here presented, in the light of all of the circumstances under which the act or acts occurred or statements were made.

1162

Likewise, the word "feloniously" means "with criminal intent", or with intent to commit the crime charged in the statute to which I have previously called your attention.

I instruct you that you are not to concern yourselves with evidence ruled out by the Court, nor are you to consider colloquies between opposing counsel or between Court and counsel, as they are not evidence.

There has been considerable evidence introduced in this case, both by the Government and by the defense, which was not material to the issues involved, so I want to stress two points to you at this time:

First, your determination of the guilt or innocence of the defendant must be reached solely on the basis of the relevant evidence adduced at this trial, without any feeling or emotion, bias or prejudice, without any anger on the one hand, and without any sympathy on the other.

1163 Second, it should be clearly understood by each and every juror that the defendant is not being tried to having been a member of the Communist Party; for having participated in the activities of that organization; or for having used the name Tony Whales. Nor, might I add, is the Communist Party on trial here. We are not concerned with the virtues or the vices of the Communist Party. Neither are the loyalty or disloyalty of the defendant, or whether he resigned or was dismissed from government service, material to the issue in this case.

Witnesses for the Government have identified the defendant as having been a member of the Communist Party, as having contributed services to and participated in its activities—and as to this you will recall that certain dates and places were mentioned—and also as having been known within the Communist Party as Tony Whales. Witnesses have also testified that the defendant made speeches against legislation for military conscription. Against this you have the statements of the defendant that he was not a member of the Communist Party, that he did not contribute any services or participate in its activities, and that he was never known by any name other than Carl Aldo Marzani, and that he never made any speeches against conscription.

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Those, ladies and gentlemen, briefly, are the facts before you.

1164 It is incumbent upon the Government, as I have heretofore said to you, to prove all the esesntial elements of the crime charged. Briefly, these elements are:

1. That the defendant made the statements charged.
2. That the statements were false.
3. That the false statements were made wilfully, knowingly, and fraudulently.

If you believe that the prosecution has proved all of these elements, beyond a reasonable doubt, then you must find the defendant "Guilty".

If, on the other hand, you believe the Government has not proved any one or more of these elements, beyond a reasonable doubt, you must find the defendant "Not Guilty".

This is true as to each and every count of the indictment.

The simple issue here involved is whether or not the defendant knowingly, wilfully, and feloniously made false and fraudulent answers to the questions asked of him.

You, of course, know that your verdict must be unanimous, and, as I have instructed you, you will render a separate verdict on each of the counts in the indictment, and in each instance your verdict may be either guilty or not guilty.

Do counsel have any suggestions?

1165 (Counsel for both side approached the bench and conferred with the Court, in a low tone of voice, as follows:)

Mr. Ford. There is one fact that I think, if my hearing is correct, you omitted.

In giving the charge on character testimony, I think there was left out of it the following element: "where, without it, the other evidence may convince you of his guilt."

If you have covered it, that is all right. I just do not remember your covering it.

The Court. Mr. Ford, at this point I stated, "evidence of good character, taken in conjunction with all the other evidence before you, might be sufficient to create in your minds a reasonable doubt."

Mr. Ford. And I think the other expression, in the Egan case, is: "where, without it, you may have been convinced of his guilt."

That is to say, where, without it, had it not been introduced, they may have been convinced, and so on.

I think that is an element in the Egan case, your Honor, as I recall it.

That is the only thing I want to call to your Honor's attention.

The Court. Have you anything to say to that, Mr. Kelley?

1166 Mr. Kelley. Well, I believe the charge is within the Egan rule.

Mr. Ford. I think it is, with that exception.

The Court. There is only one thing about it; to put it in at this juncture gives a false picture.

Mr. Ford. That is true. I didn't know whether I heard your Honor or not, and that is why I came up here.

The Court. Yes, sir.

Mr. Kelley. The Government has no comment.

Mr. Ford. I have no other comment to make, your Honor.

The Court. I think I will let it stand, Mr. Ford, under the circumstances.

Mr. Ford. All right, sir.

(Counsel returned to the trial table.)

The Court. There being nothing further at this time, I will say further to you, ladies and gentlemen of the jury, that you may now retire to the jury room to carefully and deliberately consider this case in the light of the evidence adduced and the instructions which I have given you.

After reaching the jury room, you will select a foreman

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from among your group, who will represent you when you return to the Court with your verdicts.

Before you retire, I will ask the two alternate jurors to remain, please.

Mr. Kelley. May it please the Court,——

1167 Mr. Ford. May we approach the bench?

(Counsel for both sides approached the bench and conferred with the Court, in a low tone of voice, as follows:)

Mr. Kelley. I move that the exhibits received in evidence be sent to the jury during their retirement.

Mr. Ford. I object.

The Court: I will not give them to the jury at this time, but I will give them the indictment.

Mr. Ford. Oh, yes.

* * * *

1169 *Verdict of the Jury*

(At 4:40 o'clock p. m., the jury returned to the courtroom, and returned their verdicts as follows:)

The Deputy Clerk. Are you the foreman of the jury, sir?

The Jury Foreman. That is right.

The Deputy Clerk. Has the jury agreed upon a verdict?

The Jury Foreman. We have.

The Deputy Clerk. What say you as to the defendant Carl Aldo Marzani on count 1 of the indictment?

The Jury Foreman. Guilty.

The Deputy Clerk. Count 2 of the indictment?

The Jury Foreman. Guilty.

The Deputy Clerk. Count 3 of the indictment?

The Jury Foreman. Guilty.

The Deputy Clerk. Count 4 of the indictment?

The Jury Foreman. Guilty.

1170 The Deputy Clerk. Count 5 of the indictment?

The Jury Foreman. Guilty.

The Deputy Clerk. Count 6 of the indictment?
The Jury Foreman. Guilty.
The Deputy Clerk. Count 7?
The Jury Foreman. Guilty.
The Deputy Clerk. Count 8?
The Jury Foreman. Guilty.
The Deputy Clerk. Count 9?
The Jury Foreman. Guilty.
The Deputy Clerk. Count 10?
The Jury Foreman. Guilty.
The Deputy Clerk. Count 11?
The Jury Foreman. Guilty.
The Deputy Clerk. Members of the jury, your foreman says you find the defendant Carl Aldo Marzani guilty on counts 1 through 11, and that is your verdict, so say you each and all?

(The members of the jury responded affirmatively.)

• • • •

1215 *Motion for New Trial*

The defendant moves the court to grant him a new trial for the following reasons:

1. The court erred in denying defendant's motion for acquittal made at the conclusion of the evidence.
2. The verdict is contrary to the weight of the evidence.
3. The verdict is not supported by substantial evidence.
4. The court erred in sustaining objections to questions addressed to witnesses.
5. The court erred in admitting testimony of witnesses to which objections were made.
6. The court erred in charging the jury and in refusing to charge the jury as requested.
7. The court erred in denying the defendant's motion for mistrial.

CHARLES E. FORD,
Attorney for Defendant

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1217 *Come as well as the* Attorney of the United States, as the defendant in proper person, according to his recognizance, and by his attorney, Charles E. Ford, Esquire; and thereupon it is demanded of the defendant what further he has to say why the sentence of the law should not be pronounced against him and he says nothing except as he has already said; whereupon it is considered by the Court that, for his said offense, the said defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One (1) year to Three (3) years.

• • • •

EXCERPTS FROM TESTIMONY AND PROCEEDINGS

J. Anthony Panuch

260 was called as a witness for and on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Kelley:

• • • •

Q. State whether or not in 1945 and in 1946 you were an employee of the State Department. A. I was.

261 Q. In what capacity? A. Served as Deputy Assistant Secretary for Administration.

Q. How long did you so serve? A. From October 28, '45, to January 23, 1947.

Q. Since the date you last mentioned, have you been an employee of the Government? A. No.

Q. You resigned? A. I did.

• • • •

269 Q. State whether or not the defendant, Carl Aldo Marzani, was ever officially brought to your attention from the standpoint of a potential security risk. A. Yes, sir.

• • • •

271 Q. State whether or not you ever directed your assistant, Colonel Fearing, to request Mr. Marzani's resignation from the State Department. A. I did.

• • • •

272 Q. Will you approximate for us, or give us as near as you can, the time you did direct your assistant to request Mr. Marzani's resignation? A. It was at a meeting in the last part of April, I would say around April 30, of 1946.

Q. Some time thereafter state whether or not Mr. Marzani came to your office or sought an interview or conference with you. A. Mr. Marzani requested an interview with me in the latter part of May of 1946.

Q. And was that subsequent to the time you had directed Colonel Fearing to request his resignation? A. Yes, sir.

Q. Now will you refer to the time that Mr. Marzani requested a conference with you? State where it took place, whether or not anyone else was present, and, if so, name them and state what occurred at that time between you and the defendant. A. I fixed the time of the conference at about June 1, 1946.

It was in the morning, at about 10 o'clock. It was in my office.

273 Mr. Marzani and I were the only participants in the conference.

Q. Proceed. What was stated? Give us as fully as you can recall throughout that conference what was stated by both you and Mr. Marzani. A. Mr. Marzani came in and said that he had been called in by Colonel Fearing, and that Colonel Fearing had requested his resignation for security reasons. He told me that he told Colonel Fearing that he would take up with Mr. Russell's office; Mr. Russell being the Assistant Secretary for Administration, and I being his Deputy.

Q. Proceed. A. He asked me—

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Q. You are speaking now, by "he," of whom? A. Mr. Marzani.

He asked what it was all about, and asked whether I knew of Fearing's request to him, and I said I did, we had discussed it, and that Fearing was acting pursuant to my authority.

He said, "What are the security reasons?"

And I said, "Well, they are substantial, Carl."

And he said, "Well, what do you mean by 'substantial' "?

He said, "You know what this security business is around the State Department. A lot of this is hearsay, and so forth, and what are the charges? I am entitled to know the charges."

I said, "Well, the charges are rather serious,"
274 and I told him.

I said, "The first charge, Carl, is that you were a Communist, a member of the Communist Party in 1940 and 1941, and that you were a Communist organizer; that you operated in front organizations in New York."

The Court. Did you say "front"?

The Witness. Front organizations—"organizations in New York. That you operated under the alias of Tony Whales; that your wife was a member of the Communist Party and that her Communist Party name was Edith Charles; that you opposed conscription; that you made a false statement with respect to your financial resources to get a job with WPA, and that statement was made under oath; and that you signed a petition as a member of the Communist Party for the appointment—for the election of Earl Browder as Congressman."

By Mr. Kelley:

Q. What did Mr. Marzani reply at that stage? A. Mr. Marzani replied that there was nothing to the charges.

Q. Did he refer specifically to the charges that you enumerated to him? A. Yes.

• • • •

275 The Witness. Yes, sir. He took them up one by one.

By Mr. Kelley:

Q. What did he say in respect to them one by one? A. He said, "I am not and never was a member of the Communist Party."

He said, "I was never known as Tony Whales."

He said, "As you know, I am of Italian extraction, and a lot of people sometimes refer to me as Tony, and there may have been some confusion of me and my nickname with some other character by the name of Tony Whales."

He said, "I never participated in any Communist activity, although I was active in trying to promote the welfare of the East Side in New York."

He said, "My wife is not a Communist and was not a member of the Communist Party and was never known as Edith Charles."

276 He said, "If you call my wife anything, you might refer to her as a Socialist, but not a Communist."

About the WPA business, he said, "Sure, I said that I didn't have any money and that I was without financial resources, to get the job, because I felt that I was competent to do the job, and that whether or not I had money or not was not an ethical matter of consequence."

He said, "On the Browder business, sure, I signed a petition for Browder, but that was because I felt, as a lot of other people felt in New York at the time, that Browder had been unduly punished because he was a Communist and that this was an unwarranted interference with his civil liberties."

I said, "Well, Carl, that amounts to a general denial of these allegations, but what proof is there? How can you establish it?"

And he said, "Well, how often do I have to establish this? This is old stuff."

I said, "What do you mean 'old stuff' "?

He said, "Everything that you said to me just now was

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up before the Civil Service Commission when I was in the Office of Strategic Services."

Q. May I interrupt you? Was that the first time that you knew of that matter? A. You mean this Civil Service hearing?

Q. That his case had been before the Civil Service
277 Commission. A. Never heard of it before.

Q. Proceed. A. He said, "Well, I will tell you what happened. When I was in the OSS, the Civil Service Commission investigated me and the FBI investigated me and they rated me ineligible, and the matter was taken up with higher authority and was disapproved."

He said, "Then I, on my own motion to have this matter set at rest for all time, insisted on a hearing before the Civil Service Commission."

He said, "They had a hearing at the Civil Service Commission where every charge that you have mentioned to me today was considered; where I, and witnesses on my behalf, testified under oath, and a complete record of that testimony was made. As a matter of fact, I made certain corrections in the record in my own handwriting, and on that complete record these charges were thrown out the window and I was rated eligible with the Office of Strategic Services, and after that I was inducted into the Army."

Q. Did you have any further discussion on that occasion with the defendant in relation to ideologies of different political groups? A. Yes, sir.

Q. Relate what was said by him and by you in
278 that respect. A. Well, Mr. Marzani was quite critical of our security office and said that they were a bunch of country boys who didn't know the difference between a Communist, a liberal, an anarchist, and a Socialist, and that they probably lumped everybody in one—into the same category, no matter whether he happened to be a liberal or a Communist, and that it took a person of some sophistication and some experience and intelligence to make

a determination that would not be prejudicial to a Government employee with respect to reports of this character."

He told me something of his boyhood and the struggles that he had as a child, and something of his father's experience in this country, and of his education at Williams, and something about his travels, and told me that we were both Roman Catholics, and that it certainly would be a strange thing to have a Roman Catholic turn up as a Communist. And I agreed that that would be a pretty strange thing.

It was discussion of that character.

Q. Did you discuss the question of religion any further, and its bearing upon the charges—his view? Did he make any statements concerning it? A. About religion?

Q. About religious views. A. I think he said he was not a very active Catholic, but that is about all that
279 was discussed.

Q. How long did that conference take? A. That was a long conference. I think it took over two hours. You see, it was in the nature of an appeal from Fearing's request.

Q. What is that? A. It was in the nature of an appeal from Fearing's request for his resignation, and the man was appearing before me as Deputy Assistant Secretary, and he was entitled to have his day in court, and we just threshed the matter out thoroughly.

Q. Now, you have testified, I believe, that it was during the course of that discussion or hearing that you first became aware that the Civil Service Commission had at an earlier date passed upon charges relating to Mr. Marzani. A. Yes, sir.

Q. And that you learned of that for the first time from him in that conference? A. Yes, sir.

Q. At the close of that conference did you endeavor to determine whether what he had said in that respect concerning the Civil Service Commission was true? Did you endeavor to determine if what Marzani told you was true about those things?

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280 A. No. I would say within about two weeks thereafter I was at the Civil Service Commission in connection with another matter, and I talked to Mr. Malloy, who I believe is one of their associate counsel, and I said that we had this Marzani case and I would like to see the file; the record in that proceeding.

And he said he would have to get authority to permit me to see it, and he would let me know, and I think some time thereafter, in about a week, he called me on the phone and told me he would send over one of their investigators with the record, so that I could read it in my office.

Q. Did you read that record? A. Yes, sir. I read it very carefully.

Q. Did you learn that Mr. Marzani had been declared eligible following that hearing by the Civil Service Commission? A. Yes, sir.

Q. Now, as of the time we have come to now in your testimony, which would include the conference with Mr. Marzani, and your examination of the record of the Civil Service Commission, and your acquiring the knowledge that he had, in fact, following a hearing, been declared eligible, up to that time had you ever been aware of the existence of Archer Drew, a detective with the New York City Police Force? A. Never heard of him.

Q. Subsequently did you become aware of the existence of Archer Drew, a detective with the New York
281 Police Force?

• • • •

Q. Approximately when, to the best of your recollection? A. It was early in November of 1946.

Q. State whether or not agents of the State Department conducted an investigation relating to Mr. Marzani, subsequent to the hearing which you had with him and the conference about which you have testified. A. Yes, sir.

Q. Did you direct that the investigation be had? A. I approved of it, sir.

• • • •

Q. Counsel has asked for the time during which an investigation of Mr. Marzani by State Department
282 agents was going forward. A. I think several cases in the security group were reopened in August of 1946, one of which was Marzani's case, and I think directions—I think my directions to reopen it, the Marzani case specifically, came somewheres around September 15.

I asked counsel on his recommendation to go forward and develop the testimony as to whether or not Mr. Marzani was or was not Tony Whales.

Q. Now, in your Department of Investigation, in the State Department—now, don't state what you were told—did you ever learn or were you ever advised that a certain Archer S. Drew, a detective with the Police Department, was in possession of information relating to Marzani?

• • • •

A. Yes, sir.

• • • •

283 Q. Did the defendant, subsequent to the events which you have testified to, ever come to you and discuss a matter of his resignation? A. Yes, sir.

Q. Relate the time and circumstances. A. Mr. Marzani asked to see me some time early, I would say, in November of 1946, and he told me that he was fed up with the persecution of the Department so far as he was concerned and that he was going to quit, he was going to resign.

Q. Did it subsequently come to your attention that he had signed a resignation? A. Yes, sir.

Q. Did you do anything about the matter after learning of that? A. Yes, sir.

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284 Did you issue any order to any subordinates as to any action they should take with respect to Mr. Marzani? A. Yes, sir.

Q. What was it?

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The Witness. It was either November 15 or very shortly thereafter, that I directed Colonel Hamelstein, who was the head of the Office of Departmental Administration, and Mr. Jean, who was then acting as Chief of Personnel, to hold up all action on Marzani's resignation and to make no further payments to him by way of salary.

285 By Mr. Kelley:

Q. Why? A. At that time I received reports from the Police Department in New York.

• • • •

Q. Did the action which you just testified you took in relation to his resignation, was that based upon reports you had received? A. Yes, sir.

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287 *Cross-Examination*

By Mr. Ford:

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291 Q. Now, on your direct examination you recited a conversation you had with Carl Marzani on or about the 1st day of June, 1946. A. Yes, sir.

Q. I understood you to say that was an oral conversation between you and Mr. Marzani, just the two of you present, and that it lasted approximately two hours. It was quite a lengthy conversation? A. Yes, sir.

292 Q. Was what you said or what he said reduced to writing? A. No, sir.

Q. Now I will ask you whether or not on June 1, 1946, at that conversation, the following took place:

First, that Mr. Marzani walked in your office. He came to your office, did he not? A. Yes, sir.

Q. And is it not true that the first thing he said was, "Hello, Joe"? A. Yes, sir.

Q. And you answered, "Hello." A. It could be.

Q. And then the next thing Mr. Marzani said to you was as follows:

"I've been asked to resign. I guess you know that. I came over to tell you I wouldn't. I've done nothing wrong.

I've got pretty liberal ideas, as you know. I've never made any secret of my liberal ideas, but I'm not a member of the Communist Party. As to my ideas, well, you know them. I don't like the present policy of the State Department. It doesn't make any sense to me." Now, did he or did he not say that to you? A. No, sir.

293 Q. And that you made answer to him, "and other people"; did you make that statement to him? A. No, sir.

Q. That then Mr. Marzani said to you:

"We are talking as if the Russians wanted war with us and that is nonsense. Our big problem in America is to keep a depression away. Anyhow, as far as my loyalty is concerned, you know that I am not a spy or a traitor. I don't sell secrets. I don't even let them leak out to Drew Pearson or Walter Winchell, like J. Edgar Hoover does. If you want to fire me for being liberal, O.K., but let's know what we're talking about."

Now, did Marzani say that to you at that hearing, or did he not?

Mr. Kelley. Just a moment. If the Court please, I object to the line of cross-examination, unless counsel offers it on the basis for impeachment, and is in a position to state that the record he is reading from is an accurate one that he can substantiate in the record for that purpose.

Mr. Ford. I have not offered any record as substantial.

Mr. Kelley. It is beyond the scope of proper cross-examination.

The Court. I am curious to know when and where these notes were made.

294 Mr. Ford. These are mine, typed in my office from information I reliably have and which I sent over for at noon when this gentleman took the stand. These were typed in my office.

The Court. You received those from your client, sir?

Mr. Ford. Did I? Yes, sir. I expect to put him on the

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stand and show that, too, and I am laying a foundation to that.

Mr. Kelley. If that is the case, you are laying a foundation, then I have no objection.

Mr. Ford. Well, now, I am going to object to the Government stating that I am using some record. I have not offered a record. I am entitled to use any kind of papers so long as I don't introduce them, to frame my questions on cross-examination, and I am asking him about an interview he testified about on June 1, 1946.

The Court. All right.

By Mr. Ford:

Q. And then didn't you say to him:

"Well, Carl, I know you are all right. Hell, I'm an immigrant too. I know how you feel. We got this damn Congressional pressure on us, though. What about your using the name 'Tony Whales?'" Didn't you say that to him? A. No, sir.

295 Q. And then Mr. Marzani said to you:

"Oh, that business. We got it all threshed out at a Civil Service hearing. You probably got all the transcripts on it. I brought you a book of evidence I prepared for the hearing several years ago. I would like you to look at it." Did Mr. Marzani say that to you? A. He brought a book.

Q. Did he say it to you as I read it to you, in substance? A. I don't recollect anything that you have read to me, sir, except the one thing that he did say about the Civil Service Commission, and that he had a book, and he gave me the book.

Q. Don't you remember the part about "Tony Whales"? A. Well, now, if you are asking me to answer whether he gave it as you said it, I can't say yes.

Q. Well, let me repeat how I said it:

"What about your using the name 'Tony Whales?'" Didn't you put that to him? A. I said the accusation

is that you have operated under the name of Tony Whales.

Q. Then you said:

"Sure, I will. You know we got problems. Russell isn't too good on this stuff. He is a small town lawyer,
296 and when the heat's on, you know, he hasn't had to stand up in big court cases like I have in New York."

A. I never said that, sir.

Q. By the way, were you a lawyer in New York, or are you? A. Yes, sir.

Q. And then Mr. Marzani said to you:

"Well, I don't care too much about staying, but I don't like to quit under fire of being called a Communist."

Now, did Mr. Marzani say that to you? A. No, sir.

Q. And then didn't you say this to him:

"Hell, I've been called names too. I was an attorney for Amtorg; you know, the Russian agency, so I was called a Communist. I was attorney for German Railways, so I was called a Fascist. It's just this Congressional pressure—we'll let it ride and see what happens."

Didn't you say that, in substance, to Mr. Marzani?

Q. And didn't you further say:

"Hell, Carl, it's not people like you we worry about. The real rats are these so-called liberals—people
297 like Nathan, Pritchard, Cohen, these guys with the big mouths that see all the stuff and talk about it at parties. We are not worried about you. Those guys we got to get rid of."

Didn't you tell that to Mr. Marzani? A. No, sir.

Q. And then didn't Mr. Marzani say to you:

"Well, I guess." A. No, sir.

Q. And didn't you say to him:

"Are you a Catholic, Carl?" A. No, sir.

Q. And Carl said to you:

"Sure. I am not a professional Catholic, you know, but I was baptized and confirmed and I go to Church once in a while, but, as you know, I was born in Italy and I would like to keep religion and politics separate."

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Didn't he say that to you in this discussion? A. No, sir.

Q. And didn't you say to him:

"Well, I am a Catholic too, about the same way you are, I guess."

Now, didn't that and wasn't that in substance, or any part of it, the conversation he had with you which you have testified took place on June 1, 1945, in the State
298 Department? A. No, sir.

Q. Now, following that date in June, in about the month of July, didn't you have a conversation with Mr. Marzani in your office? A. I think I did.

Q. By the way, there were a lot of conversations you and he had in your office; wasn't there many, many occasions? A. No, sir.

Q. And in the latter part of July or August, while he was in your office, didn't you say to him:

"Carl, everything is O.K. You can stay."

Didn't you say that to him? A. When was this?

Q. In the latter part of July or the first part of August?

The Court. 1946?

Mr. Ford. Yes, your Honor. Following the date. I am bringing it in chronologically.

By Mr. Ford:

Q. Yes, didn't you? A. I think I did say "It's O.K."

Q. And then didn't Carl at that time say to you:

"I will have to think it over, and it is very nice of you to say that, but I have a career to make."
299 Didn't Carl say that to you? A. No, sir.

Q. Didn't he in substance tell you that it was very nice of you to tell him he could stay, but that he would have to think it over because he had a career to make? A. No, sir.

Q. And didn't you tell him that so long as he and Russell were around, everything would be O.K.? That so long as you and Russell were around, he, Marzani, would be O.K. in the State Department—didn't you tell him that? A.

I said so long as Russell and I were around, there would be no persecution. That is the part I remember.

Q. Now, I wonder if you didn't also testify on direct about a conversation in November—November 15, 1946? A. Yes, sir.

Q. At the time when Mr. Marzani filed his resignation; right? A. I think, Mr. Counselor, I think that was before I learned of his resignation.

Q. Now, as to that conversation, did it or did it not take place? Mr. Marzani came in your office and said to you:

"Hello, Joe, I've come to give you a surprise. I hope you won't like it."

And you said to him, "What?"

And he said to you, "I am resigning from the
300 State Department."

Did that take place? A. Not in the way you asked, sir.

Q. Well, you change it to the way it did take place and tell it. A. He told me that he was going to resign, at the end of the conversation.

Q. But it took place some time in that conversation, did it not? A. Yes, sir; towards the end of it.

Q. And didn't you say to him:

"Well, that's too bad, Carl. We'll miss you, but I think you are doing the wise thing. With a Republican Congress, there is going to be trouble." Then you turned and said: "Carl, what are you going to do?"

Didn't that take place, in substance? A. No, sir. I said, "Carl, it's up to you."

Q. "Carl, it's up to you"; is that right? A. Uh-huh.

Q. And then the next thing that he answered you:

"Motion pictures. I am going to make movies for the labor movement."

Didn't he tell you that? A. I think he did.

Q. And then you said to him:

301 "There should be lots of money in that." A. No, sir.

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Q. Then he said to you:

"Well, I don't know about money. There should be lots of fun. I've already made one film, you know." Did he tell you that? A. Yes, sir.

Q. And you said to him:

"No, did you? I didn't know that you had made one." Did you say that to him? Did you say to Carl:

"No, I didn't know that you had made a movie"? A. Well, he had been making several films. I didn't know which film.

Q. At that time you didn't know which particular film; right? A. I didn't know——

Mr. Kelley. Just a moment. Don't answer the question. I object to this as beyond the scope of the direct examination. Unless some indication is made here as to where this is material.

Mr. Ford. Same conversation; same date.

The Court. Which conversation is it?

Mr. Ford. Same date, same place, regarding his resignation of November 15, 1946.

The Court. Did you have a conversation with him at that
302 time, sir, as to movies?

The Witness. I would say it was prior to November 15, and he did mention a movie and he did mention a labor movement.

By Mr. Ford:

Q. Then at the conversation about his resignation, in November, 1946, you having testified in your direct examination you did have a conversation with him at that time, then he said to you:

"Cut the kidding, Joe. Of course you know. The film 'Deadline for Action.' Don't tell us you don't know."

Is that right? Did he state that to you? A. No, sir.

Q. Did he mention the name of the film "Deadline for Action"? A. I think he mentioned the name of the film, yes.

Q. Tell us what he said about the name in that connection. See if you can complete it. At this conversation he did mention the name of the film. Tell us how he mentioned it, whether you said anything to him, or what.

Mr. Kelley. Just a moment. The Government would like to renew its objection. If counsel desires to pursue this line of inquiry on this subject matter, I will have no objection so long as it is clear he is making the witness his witness for that purpose.

303 It is clearly beyond the scope of direct examination.

The Court. I think you have gone beyond the scope, sir. I will sustain the objection at this time.

Mr. Ford. May I have an exception, your Honor?

The Court. Yes, sir.

By Mr. Ford:

Q. And is it not a fact that you said to Mr. Marzani: "Why do you go into radical stuff"——

The Court. I will sustain an objection to that, sir.

By Mr. Ford:

Q. Then he said to you:

"Radical? Have you seen the film, Joe?"

Mr. Kelley. Same objection.

The Court. I will sustain you.

By Mr. Ford:

Q. And didn't you say, "No, I haven't"?

The Court. I will sustain an objection, and I am going to suggest to counsel if he has anything further in this matter, he approach the bench.

Mr. Ford. Indeed I have, your Honor, and I will be glad to.

(Counsel for both sides approached the bench and conferred with the Court, in a low tone of voice, as follows:)

Mr. Ford. I offer to ask the following questions:

304 May the reporter put them in the record, your Honor, my proffer?

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Starting right here, this one, and going over to the next page, which is just a couple.

The Court. Let me read it, sir.

Mr. Ford. All right, sir.

(The paper with questions thereon was handed to the Court.)

The Court. I will not permit between the lines which I have marked on this paper.

Mr. Ford. May he put that in the record, what you are omitting, your Honor?

The Court. Certainly.

Mr. Ford. I had better make the proffer.

The Court. Yes.

Mr. Ford. For the record: If I had been permitted, I would continue to ask the witness whether or not the following took place as part of the conversation he testified on direct examination he had with one Marzani in November, regarding his resignation:

"Marzani: Well, it's not radical. It gives the point of view of labor. It attacks monopolies and big business. That's why the papers scream at it. But it is not radical. It's a big success. Millions of people from coast to coast are looking at it. It's a hit."

And that then the witness, laughingly, said:

305 "It is, eh? How do you get a hit? I've put money in plays on Broadway and lost both times."

Then Mr. Marzani laughingly said:

"Give the money to me. I've never had a flop yet. Well, it's been nice working for you, Joe."

That's the part your Honor won't permit.

The Court. Yes.

(Counsel returned to the trial table.)

By Mr. Ford:

Q. And then as part of that same conversation, in November, you said to Mr. Marzani:

"When are you resigning?"

And he said to you·

"As of the close of business today. I want to make sure and agree that there is no pressure put on me to resign, and that I am not under fire."

Remember that? A. No, sir.

Q. And you said to him, in response:

"No, no, Carl. Good luck. We understand each other. We boys are in the big league."

And that Marzani then said to you:

"So long, Joe."

Is that the way it happened? A. I distinctly remember that I did not say that and that that did not occur.

• • • •

336 *George G. Gallagher*

was called as a witness for and on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Kelley:

Q. State your full name, sir. A. George G. Gallagher.

Q. What is your occupation? A. I am a police captain in the Police Department of the City of New York.

• • • •

337 Q. How long have you been connected with the New York City Police Department? A. 21 years.

Q. What were your functions and duties in the Police Department during the years 1940 and '41? A. I was assigned in command of Unit 2 of the Sabotage Squad.

Q. What were the functions of that squad? A. That squad was designed to investigate subversive organizations in the City of New York.

Q. Now, in 1940, it is a fact, is it not, that Germany was then at war with England and France?

• • • •

338 A. Yes, sir.

Q. When was the subversive squad—Is that the

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correct word for it? A. The full name of the squad was "Special Squad Number 1," and the particular unit of which I was in charge was Unit Number 2.

Q. When was that organized? A. That was organized originally in September, 1939, and Unit Number 2 was organized in June of 1940.

Q. Will you please describe to the Court and to the jury the circumstances connected with the formulation of that squad?

• • • •

339 The Witness. At the direction of the Mayor, the Police Commissioner ordered that a number of young officers, both male and female, of the Police Department of the City of New York——

• • • •

be trained to infiltrate into organizations which might be considered subversive.

The Squad, in 1940, was in command of Deputy Chief Inspector George Mitchel, and he, together with the original members of the squad, investigated some 30-odd officers, 12 of them women, the remainder men.

After a thorough loyalty check, they were turned over to me and I checked them further and then trained them and ordered them to go into various organizations such as the German-American Bund, the Dante Alegares Society, which was an Italian-Fascist Society, the Communist Party, the Irish Republican Army, and various other organizations.

Mr. Kelley. Were the members selected to compose the squad in which you were in charge of varying racial backgrounds?

The Witness. Yes——

• • • •

340 We had Bohemians, and Yugoslavians, Costa Ricans; we had Jews, Negroes, Spaniards, practically all races and creeds were represented except the yellow race.

• • • •

Q. Now, what steps did you take to implement the work of that squad?

• • • •

341 A. The members of the squad were furnished by me or my assistants with false identification papers. They worked under aliases in most cases and were provided with passports—Excuse me, not passports but Social Security cards, taxi driver licenses, teacher's licenses, and such methods of identification to establish their identities under their false names.

Most of them lived away from home and penetrated into the organizations which I mentioned before. They were directed by me to advance themselves in those organizations by working as closely as they could with the people in the organizations and to try to capture such jobs as secretary of the organization, which would give them access to the lists of members' names and letters to provide them with the best opportunity for making notes of the activities of the organizations.

• • • •

344 Q. Are you acquainted with Archer Drew? A. I am.

Q. Who is he? A. Archer Drew was a member of Unit Number 2 from about July 1940 to January 1943.

Q. Did you have anything to do with his selection as a member of that unit?

• • • •

The Witness. Yes. I was given the privilege of accepting him or rejecting him.

• • • •

346 Q. Will you state the reasons for your selection of Archer Drew on your squad? A. I asked for a Negro member of the Police Department to be assigned to Unit Number 2 because the Communist Party had been attempting to induce Negroes to join their organization in New York City, and I——

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Mr. Ford. I object to that part, too, specifically, and move for a juror to be withdrawn and a mistrial declared.

The Court. I will deny it, sir.

Mr. Ford. May I have an exception?

By Mr. Kelley:

Q. When did you say that Detective Drew ceased to be a member of that squad under your command?

• • • •

347 The Witness. January, 1943.

By Mr. Kelley:

Q. And after that did he remain on the police force? A. He did.

• • • •

Q. Captain, state whether or not the names and identities of the members composing your squad were generally known throughout the Police Department itself. A. Every precaution was taken——

Mr. Ford (interposing). I object.

• • • •

348 (Counsel for both sides approached the bench and conferred with the Court, in a low tone of voice, as follows:)

Mr. Kelley. The Government considers that it is relevant and material to establish through this witness that such measures of secrecy were adopted concerning the identity of the men of this squad; that the policy was established not to disclose it even among its own members or to any Government investigators, to disclose the identity of the agent, and it does have a bearing here.

The Court. I think he has shown that, hasn't he?

Mr. Kelley. I don't think so. I want to ask him
349 specifically if their identity was concealed from agents, investigators of the Federal Government.

The Court. You may ask him, but I think it is duplication, sir.

Mr. Kelley. Its materiality is this, your Honor: The

fact of the matter, in the absence of the jury, is that investigators, during '42 and '43, could not learn the identity from the Police Department. All they could learn was, "We have information," that is all, sir, and they would not divulge identities so a flesh and blood witness could ever be obtained and brought before the commission. That is the fact of the matter.

• • • •

Mr. Kelley. I desire to show that there was an established policy of secrecy which went so far as to deprive Federal Government investigators of the knowledge of the identity of these men and members of the Police force generally, and I think it is material.

• • • •

350 Q. Can you testify to your knowledge that a policy was adopted in the Police Department of the City of New York to retain secret the identity of the members of your squad from police department members in New York generally and from any investigating agents whether from the Federal Government or a State investigating agency?

• • • •

351 The Witness. Deputy Chief Inspector Mitchel and myself, when the squad was organized, specified that the members of the squad were not to be known generally to other members of the Police Department, and until late in 1944, no other investigators, whether from the Army, Navy, or Federal Bureau of Investigation, were permitted to come in contact with our men, that is, their records were given to me or to my clerk at our office, and they never did go to headquarters or to the office of Special Squad Number 1.

Cross-Examination

By Mr. Ford:

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354 Q. Now, you listed the names of some particular organizations which you were to investigate, and after you named a few, you said "and various others." Give us the names of all of them, and what you meant by "various others." A. I will give them to you as best I can, Mr. Ford.

The American Youth For Democracy; The Teachers' Union; Transport Workers' Union; The Socialist Workers' Party; The Friends of the Soviet Union; American Peace Mobilization; the Clan-a-gael; the American Destiny Party. At the moment that is all I can recall, Mr. Ford.

Q. Now, you mentioned a Transport Workers' Union; were there any other unions that you investigated
355 with your squad other than the Transport Workers' Union and the Teachers' Union? Any other Unions?

A. National Maritime Union.

Q. What other unions, if any? A. May I make it clear, Mr. Ford, that we were not investigating the union. We were investigating——

• • • •

Q. What, if any, other unions was this squad or organization that you described at some length, investigating in addition to the National Maritime Union, the Transport Workers' Union, and the Teachers' Union?

• • • •

356 The Court. Did you investigate any other union, Captain?

The Witness. Offhand, I can't recall any.

By Mr. Ford:

Q. Would you say "no"?

The Court. He says he does not recall, sir.

The Witness. Possibly we did.

The Court. Now, you started to make some other answer, Captain.

You may answer.

Mr. Ford. Excuse me.

The Witness. In answering that question, we investigated the unions; I wanted to make it clear that we were investigating subversive elements within those unions.

By Mr. Ford:

Q. I will ask you whether or not you investigated the United Electrical Union. A. No, I don't recall ever having anyone in the United Electrical Workers' Union.

Q. I will ask you whether or not you investigated the Auto Workers' Union. A. No, I don't recall having anyone in that, either.

Q. I will ask you whether or not you investigated the Furriers' Union. A. I don't recall having anyone
357 in that. I would say definitely no.

Q. I will ask you whether or not you investigated the Steel Workers' Union. A. No, sir.

Q. Did you or did you not—the squad—investigate an association known as the National Association for the Advancement of Colored People? A. No, sir.

Q. Did you or did your organization investigate the American Negro Congress? A. Yes, sir.

Q. What? A. National Negro Congress.

Q. The National Negro Congress, did you investigate that organization? A. Yes, sir.

• • • •

430 *Louis O. Harper*

was called as a witness for and on behalf of the United States and,

• • • •

Direct Examination

• • • •

Q. Mr. Harper, will you please state your age, your residence and your present occupation? A. I am 45 years old. I live in Chicago, Illinois; 940 East 133rd
431 Street.

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Q. And your present occupation? A. I am presently employed by the Cooperative Movement in the field of educational work.

Q. What has been your previous occupation prior to the entry into the field last named? A. I was a schoolteacher.

Q. During what period of time? A. Well, I was teaching in Chicago from October, 1944, up until February of this year.

Prior to that I have taught in other places throughout the country, public and private schools.

Q. Going back about how long? A. Well, I started teaching in 1923.

Q. Have you taught constantly? A. No, I haven't. I didn't teach—well, there were breaks in the teaching years. Some years I did insurance work and I went back to school at times. I worked——

Q. Did you obtain a master's degree from Northwestern University? A. I did. I went to Northwestern University in 1937, '38, and '39.

Q. Did you live in New York City at any time? A. I lived in New York City from September, 1939, until December, 1941.

432 Q. Where did you move in December, 1941? A. I moved to Washington.

Q. D. C.? A. Yes, Washington, D. C.

Q. How long did you remain here? A. I stayed here until July in 1944, when I went to Chicago.

Q. And you have remained in Chicago since that time? A. That is correct.

Q. Are you now a member of the Communist Party? A. No.

Q. Were you ever a member of the Communist Party? A. Yes, I was.

Q. When did you first join? A. 1932, I believe. Yes, it was 1932, the year of the election; Roosevelt's first election.

Q. Are you acquainted with the defendant in this case, Carl Aldo Marzani? A. I am.

Q. When, as closely as you can state in point of time, did you first make his acquaintance? A. It was in New York and it was in the latter part of—I will have to rehash this. I was working in New York with the Carnegie Corporation from September of '39 to May, '40.

I suppose it was in the—let's see. I came there in '40, December. It must have been about the latter part
433 of 1940, in the fall, or something. I can't remember exactly.

Q. Where were you living, Mr. Harper, when you first made the acquaintance of this defendant? A. I was living at 408 East 10th Street, New York City.

Q. Will you step over to Government's map No. 1 and indicate, after you examined it and orientated yourself, the location of your home at that time?

(The witness stepped over to the blackboard.) A. It was on East 10th Street, just beyond Avenue C.

Q. You are pointing to what juncture? A. Well, here is East 10th Street (indicating). It was just beyond Avenue C on East 10th Street.

Q. On the north or the south side of the street? A. North—south side.

Q. Do you know where the defendant Marzani was living at the time you first made his acquaintance? A. He was living on Sixth Street between Avenue C and Avenue B.

Q. On the north or south side of the street? A. On the north side of the street.

(The witness resumed the stand.)

Q. By what name did you first make the acquaintance of the defendant? A. My first—well, we called him Tony. At that time I knew him as Tony Whales.

434 Q. Did you come to know him under a different name? A. Yes. We were in two other organizations in which he was known as Marzani; Carl Marzani.

Q. Now, at the time when you first made the acquaint-

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ance of this defendant, were you in the habit of attending meetings of the Communist Party in New York City? A. I attended some. I attended meetings—well, I attended mass meetings that they had. I attended group meetings they would have.

Q. What kind? A. Group meetings. Small meetings in that particular neighborhood where I was living.

Q. Did you ever attend a meeting of the Communist Party at which this defendant was present? A. Yes.

Q. Did you ever attend a meeting of the Communist Party at which the defendant was present and at which there was also present a Negro by the name of Bill Easley? A. Yes.

Q. Have you come to know an individual whom you once knew as Bill Easley, under a different name? A. Yes.

Q. What different name? A. Well, I know him as Detective Drew.

435 How long has it been since you learned that the man you knew as Bill Easley is, in fact, Detective Drew? A. I learned it this past Monday when I met him here in Washington.

Q. Up until that time had you known the individual by the name of Bill Easley? A. That is right.

Q. Relate the circumstances and the time in connection with your making the acquaintance of Bill Easley? A. Well, I had been in New York working as a research assistant in education on the Carnegie Corporation study, the Negro and America. I was living down at 408 East 10th Street and when that job came to an end, the study was completed, I went to work in the Federal Building as a computer in the Coast & Geodetic Survey.

I was living here at 408 East 10th Street. It was a building that had only one other Negro family in it, a five-story walk-up building, and was very friendly with the family that had charge of the building.

I didn't take part in much activities, but I was invited down to a party on the first floor and there were other people present at that party, and I met Bill Easley.

Q. Were you associated with the organization known as the National Negro Congress at or about the time that you are now speaking of? A. Well, soon after having met Easley, he came to my home and we talked.

436 We had friendly relations and he told me that they needed me in——

• • • •

Q. State whether or not you participated with Bill Easley in connection with activities related to the National Negro Congress of the East Side of New York City. A. As Bill Easley informed me that there was a National Negro Congress group in operation on the lower East Side, I was at that time an ex-member of the National Executive Board of the National Negro Congress, and as such he was desirous to bring me into the activity of this group.

I agreed that it was, and became active in meeting with them in their National Negro Congress meetings. I helped them to draw other Negro people into the activities, and it was in that respect that my association with Bill Easley developed even more than just friendly. We were actually working together on a Negro Congress activity.

Q. Mr. Harper, did you ever attend a meeting in the presence of this defendant, held at the Church of the Living God, in New York City?

• • • •

438 The Witness. Yes.

By Mr. Kelley:

Q. Now, fix for us approximately, as exactly as you can, the time, the circumstances, and relate what took place at the meeting. A. Am I to elaborate?

The Court. Yes.

The Witness. The National Negro Congress at that time had been carrying on most of its activities up in that section of New York around mainly where I was living, but

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there was a large Negro residential group in the lower East Side, around East Broadway, in that territory.

We had not been able to make much contact with them. There were a few of the members who lived down in there and it was desirous that we hold a meeting down in that area to attract those persons, let them know what the program of the Congress was, and why it was to their interest to come in and be active in it, and for that reason we held this meeting down in the area there. We were able to secure the use of the Church——

439 The Court. What Church was it?

The Witness. The Church of the Living God.

By Mr. Kelley:

Q. Was the minister of the Church present? A. The minister of the Church was present at the meeting. We had this meeting there. At that time the chairman of our council group was a young fellow who was not very much of a public speaker. While he secured the Church and made the initial advances to get it, he did not chair the meeting because of his inability to be a platform chairman.

As I remember it, Bill Easley chaired the meeting and I was one of the speakers, and also present at that meeting was a representative of the Communist Party in that section; rather, a person representing the Communist Party.

Q. Who was that? A. Tony Whales.

Q. Is that the man seated here? A. That is right.

Q. Did Tony Whales speak at that meeting? A. He spoke at that meeting.

Q. Was he introduced by the name Tony Whales? A. He was introduced by Bill Easley as Tony Whales.

Q. Relate now the substance of what this defendant said at the meeting in the Church of the Living God. A. Well, the substance of what he said was the fact that

440 the Negro people were a minority. They had problems in relation—speaking of the problems that we of the Congress were working on; the question of rents, the inability to be permitted to live in certain places;

thrown out by landlords without any real provocation; and that their struggles were struggles that the Communists were concerned with, and that the Communists were willing to give them assistance; that the National Negro Congress was the national organization that the Negroes should join, and along that line.

Q. Now, did you attend at a later time a meeting in the home of this defendant? A. I did.

Q. Relate who was present so far as you recall, and the time as exactly as you can fix it, and describe what took place.

• • • •

The Witness. Present at that meeting were Louis Harper, Harry Palmer, Bill Easley; Negroes representing the National Negro Congress group. Harry Daniels,
441 Edith, Tony Whales, a fellow named Meyer Zanger; a fellow named Kaplan.

There were some others I am certain.

The Court. What was the date, approximately?

The Witness. It was in the spring, around some time in May, May of 1941, I think.

• • • •

Q. Who presided at the meeting, if anyone? A. Harry Daniels presided at the meeting. He was——

Q. What was his position? A. He was—I think he was the chairman of the executive committee of the Communist Party of that area.

Q. Now, relate what was said by those various persons present at that meeting. A. Well, the meeting was a meeting between the representatives of the Negro Congress group and the executives of the Communist Party of that area, to see what could be done to increase the growth of the Negro Congress and what was hampering its growth, and to iron out these difficulties.

In our work there, among the Negro people, we had

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found a number of them who resented the fact that there were whites attending our meetings. Some of our members were saying, "We can't get the Negroes to join the Congress because they say the Congress is the Com-
442 munist Party." And, well, we just had to iron that out to see what actually would be—what we could do.

At our Congress meetings at times members would actually carry on recruitment to the party.

Q. Members of what? A. Members of the Communist Party would carry on recruitment of people attending the Congress meetings interested in the question of rents and places to live and jobs and so forth, also questions of attempts to stop some of the indiscriminate brutalities that were being carried on against them in particular, and they resented the fact that there were whites there, saying that we were trying—some were saying that we were Communists, and we wanted to make it possible to continue building the Congress on the Congress program.

At that meeting criticisms were made of the work being done. Harry Daniels outlined the whole role of the Party and the Negro question, and at that meeting I took the privilege of outlining how the Communist Party could help us in building the Negro Congress; the role that the Party could play.

Q. Did this defendant participate in the discussion? A. He participated in the discussion to the exent of making criticisms of some of the points raised, pointing out the weaknesses of the position, stating that—his position was that we ought not to let the Red scare affect our work and his participation was a matter of a critical
443 analysis of some of the points raised. As I remember, he didn't raise any original points on it, but served as——

Q. Did the defendant participate as a representative of the N.N.C. or the Communist Party?

Mr. Ford. I object, as calling for a conclusion.

Mr. Kelley. If you know.

Mr. Ford. I object, because it is a conclusion.

The Court. Do you know whether he was a member of the Communist Party, sir?

The Witness. He operated as the representative of the Communist Party, so far as we know.

Mr. Ford. I move the last be stricken out as a conclusion "he operated as."

The Court. I will deny the motion, sir.

Mr. Ford. Yes, sir. Exception.

• • • •

Cross-Examination

By Mr. Ford:

Q. Are you a member of the Communist Party now? A. No.

Q. When did you cease to be a member? A. I ceased carrying membership in the Communist Party in 444 the year 1938.

Q. And since 1938 you have not been a member? A. I have not been a member of the Communist Party.

Q. Since that time have you attended meetings of the Communist Party? A. I have.

Q. And that was after you ceased being a member you continued, then; it that right? A. That is right.

Q. Now, let me take up with you, please, the American Negro Congress Organization.

You are a member of that; right? A. Not at the present.

Q. Were you a member of it? A. I am not at the present.

Q. When did you quit that organization? A. When I came to Washington.

Q. How long were you a member of the National Negro Congress? A. From the time of its foundation in 1936 until I just dropped out of activity when I came to Washington.

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Q. And why did you cease when you came to Washington? Why did you cease then to be a member of the National Negro Congress? Why? A. Some of the activities in which I became involved took me out of that
445 stream of relationships.

Q. Was is because you lost interest in any of the things that the National Negro Congress was advocating? A. It was not.

• • • •

Q. I would like to have you list some of the purposes of the National Negro Congress; what its objects were. A. In the founding of the National Negro Congress it was felt that there was not a militant enough organization representing the aspirations, desires, the well-being of the Negro people in the United States. Negro Congress was formed in 1932.

At that time the most vocal organization of the Negro people was the National Association for the Advancement of Colored People.

That was a period of great economic stress, the height of the depression. And many Negroes had come to feel that the NAACP was not militant enough as it had been in previous years, and so a call was sent out calling all organizations, Negroes, trade unions, churches, lodges, and friends of the Negro people, to come to a founding convention that was held in Chicago.

446 At that time when that call was sent out to the different organizations you have enumerated, like the churches and all, there was a response from those organizations, was there? A. That is right. They came together in Chicago in 1936, and we had a three-day convention in the big Eighth Regiment Armory.

The Court. Will you gentlemen approach the bench a minute?

(Counsel for both sides approached the bench and conferred with the Court, in a low tone of voice, as follows:)

The Court. Why are we interested in this National Negro Congress?

Mr. Ford. No. What I asked him was the objects of it, but he is telling how it was organized, which is different from what I asked him.

The Court. We are not concerned with that at all, sir. Whether it is the Knights of Columbus or somebody else, even.

Mr. Ford. With its objects, you mean?

The Court. Yes.

Mr. Ford. Well, yes, for this reason: I want to establish from him the purpose of the National Negro Congress, because he said at the meeting he had been asked at the Negro Congress that he met the defendant Marzani.

447 Particularly the one that was held at the Church of the Living God, and that at that time they discussed problems of the Negro, places to live in, being thrown out by landlords, and brutality.

This is all that the Government brought out on direct examination.

The Court. That is right, but that is related to the Communist Party and the tie-in. We are not concerned with this National Congress, sir.

Mr. Ford. It was at that meeting this was had.

I am going to show on cross-examination that this defendant, if he was there, was there because of the rents, that he was advocating these things and not communism—the defendant.

The Court. We will not go into this National Association for the Advancement of Colored People or the National Congress.

Mr. Ford. Excuse me, your Honor. I thought the Government, again, had introduced that subject in the evidence, and having introduced it, they introduced it in connection with a meeting held at the Church of the Living God, at which he says this defendant was present.

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The Court. I appreciate that, Mr. Ford, and you need not repeat it. I remember it. I remember what he said there.

Now, if you want to inquire about that meeting, all right, but we are not going into the organization and
448 desires and aims of this Congress.

Mr. Ford. May I have an exception?

The Court. Yes.

We are not concerned with that.

• • • •

The Court. Come to the bench again for a moment gentlemen.

(Counsel for both sides approached the bench and conferred with the Court, in a low tone of voice, as follows:)

The Court. I was talking of the general situation, Mr. Ford. I was not talking about the meeting.

Mr. Ford. I understood that, your Honor. I am not going to go into the meeting.

The Court. Right.

• • • •

449 By Mr. Ford:

Q. Now, Mr. Harper, you pointed out that when you lived in New York you lived in an area up in here (indicating on map). A. That is right.

Q. And that Mr. Marzani lived in that same general area; right? A. That is right.

Q. Now, Mr. Marzani—while you lived in New York, Mr. Marzani lived in the same neighborhood as you did; is that right? A. Yes.

Q. How many blocks away did you live? A. I lived on 10th Street and he lived on 6th. I lived between Avenue C and D, and he lived between Avenue B and C.

Q. It is a question of five blocks? A. Yes.

Q. Right? A. Yes.

Q. And on many occasions while you both lived in that

neighborhood, he would visit your house, wouldn't he? A. My home?

Q. Yes. A. No.

450 Q. Never has. A. Not that I remember.

Q. And you have visited him at his home, haven't you? A. I went to a meeting there.

Q. You visited at his home. You went to his home, didn't you? A. To a meeting; yes.

Q. Now, you said there were other organizations in which Mr. Marzani was a member. What were they? A. I was invited to become one of the vice-presidents of the East Side People's——

• • • •

The Witness. The East Side People's Committee was one, and the Committee to Smash Hitler and Defend America was the other one.

By Mr. Ford:

Q. And you were both members of those organizations; right? A. Yes.

Q. I am now directing your attention to the meeting at the Church that you spoke about. Now, at that meeting at the Church, is it or is it not a fact that Mr. Marzani was there as a chairman of the Defense Committee of

451 the East Side? A. There was no Defense Committee of the East Side at that time, that I know of.

Q. Did you know Mr. Marzani as a chairman or subchairman of the Defense Committee of the East Side? A. Not at that time.

Q. Any time? A. Later.

Q. When? A. Approximately just about two months after that meeting—about three months after that meeting; sometime in July, the Committee to Smash Hitler and Defend America was established.

Q. And Mr. Marzani—— A. And Mr. Marzani was the secretary of that, and I was on the executive board of that.

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Q. And at the meeting in the Church, did you or did you not hear Mr. Marzani speak to other members of your race relative to police brutality against the colored people? A. That is one of the things that we were having a meeting about, the question of against police brutality, for the right to live in areas, against evictions. Yes, he spoke.

Q. And he spoke and asked—did he not ask the members there, "Let us go to the authorities and see if we cannot stop police brutalities against the Negroes in that
452 neighborhood"? A. Those were the purposes set forth.

Q. And then in the meeting of the Church, didn't he say, "Let us go to the authorities and see if we cannot stop the landlords from throwing Negroes out of their living quarters on the streets"? A. Yes. That was the substance of our meeting. That was the thing that we were meeting for, was to get the people organized.

Q. And did he not speak at that same meeting at the Church and say there should be no discrimination against the colored people as to where they would live down there in the East Side and that they should not be segregated? A. I would assume that that was part of his——

Q. Do you recall other things at that meeting that Mr. Marzani said in defense of the Negro people as to their living and their habits and their working conditions, in their favor? What else, if anything, do you remember him saying at that meeting in Christ Church? A. I think that is the substance of our whole meeting.

Q. And at that meeting were there people other than members of the Communist Party; in this Church? A. There were Negro people there that we were trying to get into the National Negro Congress, people we didn't know. There was the minister, who we definitely knew was
453 not a member of the Communist Party.

Q. And were there people there, many people, who were not members of the Communist Party? Who

were of different religions and different nationalities? A. I don't know that I can answer that, because——

Q. If you know. If you don't know, say so. A. Well, there were Negroes and whites there.

Q. Now, you made the statement in your direct examination in substance, as follows:

"Don't let the Red scare hurt our work."

Do you remember using that expression while you were answering Mr. Kelley's question? A. The "our"——

Q. The question is, do you remember using that expression to Mr. Kelley? A. That those were some of his remarks?

Q. That is right, yes. A. Yes.

Q. And is it not a fact that Mr. Marzani at that time said to you all in that neighborhood, at that meeting, "don't let people calling us Communists stop us in our work to help and advance the Negro race in our neighborhood"? Didn't he say that? A. I can't remember the words, but that certainly could be the substance.

454 Q. And isn't it the substance that he said, "Let us keep on doing this work of helping the Negroes in these different capacities, regardless of what names they may call us"? A. That could be.

Q. What is your answer, sir? A. That could be.

• • • •

Redirect Examination

By Mr. Kelley:

Q. Referring to the meeting at the Church of the Living God, we have covered what several said.

What did the minister say? A. The minister spoke after the other speakers. He said that he was glad to see people beginning to think about the welfare of his people; that there were probably charges that they couldn't get in, but that his church would always be open to persons who were working for the betterment of his people; that he didn't care whether the people were Reds or not.

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He said, "I don't care whether you are Reds or not. If you are working for people's betterment, my doors will be open to you."

Q. About how long did Tony Whales speak there that night? A. Approximately about ten or fifteen minutes.

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455 *Recross Examination*

By Mr. Ford:

Q. And by ten or fifteen minutes you mean a formal talk, like taking a platform or a pulpit, or something, but that you saw Mr. Marzani around there among the people, talking, in addition to that, didn't you, in groups and at the front door, either coming in or going away? A. Well, all meetings, when they are over, people talk in groups.

Q. That is right. But how long did the meeting take place? I mean the whole meeting. Not how long did each man take to speak, but how long did this meeting take place? A. Oh, I would say approximately about an hour and a half of the meeting.

The meeting was called for eight o'clock and it got under way about a quarter to nine, and out by about—the folks on their way home around about ten. I don't know.

• • • •

456 Q. Now, that Defense Committee in which you were on the executive board and he was the executive secretary—

The Court. Are you going into the functions of the executive committee at that meeting, sir?

Mr. Ford. What they did at those meetings, he and Mr. Marzani, or Mr. Marzani and he.

The Court. No, sir.

Mr. Ford. May I have an exception?

The Court. Yes, sir.

Mr. Ford. And may I make the proffer in the record, so that I can say what I would have shown?

The Court. Yes, sir.

(Counsel for both sides approached the bench and conferred with the Court, in a low tone of voice, as follows):

Mr. Ford. Had I been permitted to ask the question and gotten an answer, the witness would have testified in substance and generally as follows:

That he and Marzani worked as members of the Defense Committee and that they got together all classes of people, white and colored, of all different religions, of all different nationalities, and worked with those people for a considerable length of time in organizing them to join the war effort of the United States and to do everything within their power to help the United States in its war effort and in all of its phases.

The Court. You have talked to him, sir?

457 Mr. Ford. To who?

The Court. To this witness?

Mr. Ford. Have I talked to him? No; but that is my information.

Mr. Kelley. May I be heard in the record?

The Court. Yes.

Mr. Kelley. The Government would object on the basis that such testimony is not relevant or material to the issues in this case, and does not in any sense tend to impeach the witness and therefore would not even be proper if offered for that purpose.

Mr. Ford. That tends to show that it would be part of a whole picture tending to show his relationship, between this witness and the defendant.

The Court. I will overrule it, sir.

* * * *

458 A. Yes, sir. We asked people to join the National Negro Congress, East Side Council. We gave them the names and addresses of persons, some who joined that night, and those who didn't join that night, they were

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given names of persons who were the responsible leaders of the Council.

Whether or not there was any solicitation for membership in the Communist Party, that I don't know.

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459 *Archer S. Drew*

was called as a witness for and on behalf of the United States.

• • • •

Direct Examination

By Mr. Kelley:

Q. State your full name, sir. A. Archer S. Drew, detective, City of New York.

Q. What is the number of your shield? A. 1101.

Q. How long have you been a member of the Police Department? A. A little over eight years.

Q. How old are you? A. I am 39.

Q. Would you relate briefly for the Court and jury something of your background and education?

• • • •

460 The Witness. I was born January 30, 1908, in Portsmouth, Virginia. I attended the elementary schools there through to the seventh grade.

Then I went away to high school at St. Paul's, Normal industrial Institute, located at Lawrenceville, Virginia. I graduated in 1926.

In 1926, the fall, I went to the Virginia Union University, located at Richmond, Virginia.

There I stayed about a year and at the completion of that year I left school on account of the illness of my mother, who was then residing in New York City.

I then took my address in New York and I went to work for the J. M. Horton Ice Cream Company. I worked there as an office porter for the period of about two years.

From that time I went to work for the United States Trucking Corporation and I worked there until 1936, when I was employed as a United States Post Office employee as a temporary carrier.

As a result of an examination for patrolman of New York City, which I took in 1934, I was offered a job as a special patrolman for the Board of Transportation. I stayed there as a transit police until April in 1939, when I was called to the regular force of the New York City Police Department.

There I worked in uniform, assigned to the 73rd precinct, after graduating from the recruit school.

461 I worked in uniform about a month, and then I was assigned to the 12th Detective District. At the 12th Detective District, I stayed there, and also in the Burglary Squad, until 1940, when I was then assigned to the Undercover Squad of the City of New York Police Department.

At that particular time, in 1940, when I was assigned to the Undercover Squad, I was called to New York City Police Headquarters where I was questioned by Captain Mitchell and Captain Gallagher, as to my—

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TheWitness. As to my scholastic record and also as to my fitness for the new assignment.

By Mr. Kelley:

Q. Now state whether or not after you were appointed to that squad, you received orders concerning your duties and functions as a member of that squad.

Mr. Ford. Your Honor, without interrupting continuously, may it be understood my objection goes to all this?

The Court. The fact that he was on the squad, sir?

Mr. Ford. His instructions that someone told him something, because it was out of the presence of the defendant.

The Court. All right.

The Witness. I did.

462 By Mr. Kelley:

Q. What were they? A. I was assigned to join the Communist Party in Harlem. I was given that area of New York City. I was assigned operator's number 29.

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I was instructed to divorce myself from all ties with the New York City Police Department; that we were to operate strictly under cover. Our identities were not to be known to other members of the Party, our family or friends—that is, in relation to our work.

We had separate headquarters, a place that was known as the Martin Pearson Company, that was located at 226 West Broadway, and later we moved to 225 Broadway and we operated as the Merchandise Survey. Captain Gallagher was known as Martin Pearson and this was supposed to be the head of an advertising firm.

There we made our reports and any other contracts—we received our pay checks as well. We were not allowed to carry a shield, gun, or anything that would reveal us as being police officers.

Q. Were you furnished anything in the way of fictitious identification? A. Yes, I was. I was given the name of William Easley. I reserved for myself a room in Harlem which was the address of 111 West 117th Street.

I there took up my residence, although my legitimate home was in Long Island.

463 Q. Did you receive in the course of your membership on that squad any form of identification card that would indicate your job, your fictitious job,—

• • • •

Q. Did you receive any kind of identification card at all? A. I did.

Q. What was it? A. I received a Board of Transportation card in the name of William Easley and supposedly employed as a railroad clerk.

Q. Did you attempt to perform the functions which had been outlined for you in Harlem? A. I did.

Q. Relate with what result. A. No results at all.

Q. What do you mean? A. By that I mean that I did not contact the Communist Party in Harlem as I had been originally assigned.

Q. Then what did you do? A. I then went to Union Square, which was located at Fourteenth Street in Manhattan, and there after several days I did contact members of the Communist Party through conversation and more fraternizing with them.

more fraternizing with them.

464 Q. Now, what were your orders with respect to the making and filing of reports?

Mr. Ford. I object.

The Court. Very well. You may answer the question.

The Witness. My instruction was that any time I came in contact with any Communist Party member or attended a meeting; in fact, as to my daily activity I was instructed to make a report under the form, under the number which I have already submitted—29—and I was to take this report to our office which was located at either address I gave you on West Broadway or on Broadway, and there that this report was turned over to Captain Gallagher.

By Mr. Kelley:

Q. Did you type out any of your reports? Q. I did.

Q. Did you type all of them? A. No, I did not.

Q. What was the situation as to those you did not type? A. As to those that were not typed by me, I would write them out in longhand at home and I would take them to our office where we had stenographers there for that purpose to do the typing, and then after I would dictate these reports I would read them for their accuracy and turn them over to Captain Gallagher.

465 Q. By "office" do you mean your undercover office? A. That is right.

Q. What form—I do not want to know anything that you put in your reports—did you have some established form of making up a report? A. Well, we did have an established form.

Q. Describe that form. Now, do not mention anything that you put in any particular report other than as to

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the form. A. On the left-hand corner of our reports we were supposed to put—in fact, we did put—

Mr. Ford (interposing). I object to this.

The Court. What did you put, sir?

The Witness. We put our assignment.

I put "C. P. Harlem", my code number, operator's number 29, and also the number of the report.

Then I would make out the body of my report and on the end of that report I would put the personalities which I had met.

By Mr. Kelley:

Q. Did you date the report, and if so, in what way? A. I would date that report in a numerical way by naming the number of the month and the day.

466 Q. Did some of your reports cover matters occurring on more than one or different days? A. They did. Sometimes a report would cover two or three days.

Q. Did you, without exception, divide the reports according to days? A. I did.

Q. Did you make copies of your reports or submit them only in the original form? A. I submitted them only in the original form.

Q. How frequently would you actually type up your report or write it in longhand notes, making up a report? A. Well, frequently, I would typewrite the report. I had a typewriter at home.

Q. I do not think you understood me. A. I did not, sir.

Q. How often did you prepare reports? A. Oh, I prepared a report each night. Sometimes I would carry it over into the following morning, but the majority of it was done at night.

Q. How frequently would you hand in the reports? A. I would hand in my reports about two or three times a week and I reported to our Undercover Squad office.

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503 *Archer S. Drew*

• • • •

Direct Examination—Resumed

By Mr. Kelley:

• • • •

508 Q. Now, Mr. Drew, independent of your reports, do you have a present recollection of all of those events in which you and the defendant were present?

509 A. I do.

Q. Have you, independent of your reports, a present recollection of the date of all occasions when you and the defendant were present, that is, without reference to your reports?

• • • •

The Witness. No, sir; I do not.

By Mr. Kelley:

Q. Independent of your reports, do you have a present recollection of all persons who were present at each of these events? A. No.

Q. Independent of your reports, do you have a present recollection of all that occurred and was said at each of these events?

• • • •

A. No, I do not, sir.

• • • •

Q. Now, when and where did you join the Communist Party? A. I joined the Communist Party on July 22, 1940, at the Sixth Assembly District for the Com-

510 munist Party, at 44 Avenue C, in Manhattan.

Q. Would you please go to the map, marked Government's Map No. 1, and point out where 44 Avenue C is?

(The witness stepped down to the blackboard.)

A. 44 Avenue C is located between Third and Fourth Streets, on the east side of Avenue C. It is about the middle of the block (indicating).

Q. What time of day or night was it when you went there? A. About 8:30 p. m.

• • • •

Q. Were you accompanied to 44 Avenue C by someone? A. I was.

Q. Who? A. A fellow by the name of Joaquin Pervlia.

Q. Did you see the defendant, Carl Marzani, at that place on that occasion? A. I did.

Q. Relate what happened when you arrived at 44 Avenue C. A. At 44 Avenue C I was taken into an office where I was introduced to one of the recruiting managers by the name of Jesse. The recruiting manager issued me an application blank and asked me questions as to
511 my name, address, where I was employed, and asked me who sponsored me.

He also informed me that the initiation fee would be 50 cents.

Mr. Ford. I object to all this on the ground of hearsay, your Honor.

The Court. Very well, sir.

What did you actually do?

I sustain the objection.

The Witness. I paid 50 cents for my initiation fee and I was given a Communist Party membership book.

By Mr. Kelley:

Q. Did you later on at the same place that evening attend a meeting? A. I did.

Q. Was this defendant present at the meeting? A. He was.

Q. Relate who were there and what was said during the course of that meeting? A. At this meeting that Edith Charles presided. Those in attendance were Joaquin

Pervlia, Tony Whales, Clem Dubrowski, Jesse, and myself.

Q. Were you introduced to this defendant on that occasion? A. I was.

512 Q. Who introduced you? A. Jesse.

Q. What was stated in the introduction? A. (Quoting): "This is a comrade, Tony. This is a new comrade, Bill Easley. Tony is a national committeeman."

Q. At that moment did you know him by any name other than Tony? A. No.

Q. Approximately how long after that did you come to know him by any additional name? A. About a month later.

Q. And by what name did you come to know him, additional name, then? A. As Tony Whales.

Q. Now, to go back to the events which you have testified occurred on the 22nd of July, proceed to relate further what was said at that meeting during the period of time that this defendant and you were present. A. At this meeting Edith Charles was making a speech about a parade that was going to take place on the lower East Side of Manhattan, and that this parade was for a peace demonstration; that this country was on the verge of entering an imperialist war, and now was the time to bring to the people the need for peace, and that the Communist Party,

513 in support of the Y. C. L., was going to stage a peace demonstration. That is about all I can recall—No, one other thing: and also was mentioned the fact that Congressman Marcantonio was going to have a meeting at Randall's Island, and the comrades were all urged to attend this rally and also to support Congressman Marcantonio in all of his endeavors.

Q. You mentioned the name of Edith Charles. Who was she? A. Edith Charles, I learned later, to be the wife of Tony Whales.

Q. Now, you mentioned the names of certain persons whom you say were present at that meeting. Are you able

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to testify that the names you have mentioned are all the persons who were present at the meeting? A. All that I have testified to were there. I may have left out one or two. I can't recall.

Q. Did you in your reports set forth the names of persons present at the various meetings?

• • • •

The Witness. I did.

By Mr. Kelley:

Q. Would your recollection be refreshed by reference to your report as to all of the persons present at that time? A. It would.

• • • •

522 Q. Mr. Drew, do you knew whether anything was distributed at that meeting to those present? A. Yes, sir.

Q. What? A. Leaflets and pamphlets.

Q. State whether or not you retained and attached to one of your reports such leaflet or pamphlet. A. I did.

Mr. Ford. We object to that, particularly as far as it is connected up with the report.

The Court. Very well.

By Mr. Kelley:

• • • •

Q. Were the leaflets or pamphlets that you referred to distributed in the presence of this defendant? A. Yes, they were.

Mr. Kelley. If the Court please, the Government offers in evidence the first yellow sheet—I should say the three yellow sheets attached to Government's Exhibit 33-A.

• • • •

The Court. Have you identified these three, sir?

The Witness. Yes, sir, I do.

523 The Court. When did you receive them?

The Witness. The night of that meeting of July 22, 1940, at 44 Avenue C.

• • • •

(The attached sheets referred to were thereupon marked Government's Exhibits 33-a-1, -2, and -3, respectively, for identification.)

By Mr. Kelley:

Q. Mr. Drew, do you have a present recollection of the date and place of the next Communist Party meeting that you attended? A. I do.

524 Q. When was it and where was it? A. It was July 23, 1940, at 44 Avenue C. It was a recruit training class.

Q. Was that the next day after the meeting you have recently testified about? A. Yes, it was.

Q. Where was that held? A. At 44 Avenue C, the Communist Party headquarters for 6th A. D.

Q. State whether or not the defendant was present at that time. A. He was.

Q. Relate what took place in the defendant's presence that night. A. The defendant was conducting a class for all the recruits in the Communist Party at the Sixth Assembly District. The course that he was instructing in dealt with race discrimination, white chauvism, and I can not recall the other subject, but it was a general subject. Those were the subjects the defendant was instructing in.

Q. Would your memory be refreshed as to the other subjects covered, by reference to your report? A. It would be, sir.

525 Q. Would you please refer to it for that purpose?

• • • •

Q. Is your memory now refreshed as to what that defendant said on that occasion? A. It is.

Q. Will you relate it? A. The other subject which I omitted in my previous testimony was the principles of Com—

Mr. Ford (interposing). I object to it. The question is what he said.

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The Court. You may answer the question, sir.

The Witness. Principles of Communism. The defendant spoke about how Negroes were being exploited and he stated that as a minority they should have their rightful place. He also praised unions, the C.I.O. and A.F. of L., and he also advocated that the unions have Negroes and that they would not have any discrimination in those unions.

526 They particularly praised the C.I.O.

By Mr. Kelley:

Q. Now, do you have a present independent recollection of the date and place of the next Communist Party meeting that you went to? A. No, I cannot, unless I refresh myself from my report.

Q. Will you do so?

• • • •

A. It was July 29, at the same place, 44 Avenue C. I went there to report on my activities on a recent petition campaign that was going to Nyack, New York. The mission was not completed, so I went to the section headquarters and reported to Tony, my organizer, and

527 told him that I had been there.

Q. Now, by "Tony," your organizer, who do you refer to? A. Tony Whales.

Q. This defendant? A. That is right, sir.

Q. All right. Relate the conversation that you had at that time with the defendant. A. I told my branch organizer, Tony, that I had met the group, and I went up to Nyack, but we arrived late, due to difficulty with the truck we went up in, and I told him that I was anxious to take an active part in the petition and in their work. The defendant replied that he was very pleased, and he could see that I had the makings of a good comrade.

• • • •

The witness Drew, in the course of his direct testimony referred frequently to his reports, identified as Government's exhibits No. 33 A-X for the purpose of refreshing recollection. The formal questions and answers pertaining to such refreshment have been eliminated from this Joint Appendix.

Q. All right, relate the circumstances and what
529 took place the next time you met this defendant. A. That was on August 6, 1940, at 44 Avenue C. I was there at a recruit class and after the class was over we were told to assemble to the main room where the section organizer Bob Appel, wanted to speak to everyone.

At this time Comrade Appel told us—

530 Q. Wait a moment. Was the defendant present at the time you are speaking of? A. Yes, sir. Comrade Appel told us that there was going to be a mass demonstration at Times Square and that we were to leave all identification that we possessed on our person at the Communist Party headquarters, in order that if the police did pick us up we would not have anything to identify us as being Communists.

They were divided in different groups. The branch organizers had a group. I was under the group of Comrade Meyer. I went along with Comrade Jean and her brother and we proceeded to Times Square.

Q. Wait a moment. Did the defendant accompany you? A. No, he didn't.

• • • •

531 Q. All right, relate the time and place you were present and what took place at your next meeting with the defendant. A. At our next meeting, it was on August 9, and it was at Avenue A and 14th Street, in Manhattan, and about 9 p. m. There the Branch F-2 of the Communist Party was holding a meeting against conscription and it was an Italian—that is, speaking in Italian—and the speaker was the defendant, Tony.

Those present at that time were different ones from our branch. I do not remember all, but I do remember Mary Fernandez as I was with her most of the time, and I did distribute leaflets that were printed in Italian. I could not understand the speaker, as he was speaking in Italian, but I do not know that from a previous arrangement—

Q. With whom?

Mr. Ford. I object.

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Q. With whom? A. With the defendant and others, that this meeting was to be aaginst conscription and that it was being conducted in Italian, in an Italian
532 neighborhood.

* * * *

Q. Relate the time and place, who were present, and what occurred at the time of your next meeting with this defendant. A. Our next meeting took place on August 12, 1940, at 44 Avenue C. There I was asked to turn in my membership book by the defendant, so that in order to change my name as to protect me on my job as being a member of the Board of Transportation or railroad clerk—

Q. Let me interrupt you. A. Yes.

Q. What name was on your membership card at that time? A. William Easley.

Q. Do you have your membership card? A. No, sir.

Q. Do you know where it is? A. No, sir.

Q. Was William Easley—have you testified that was your adopted name? A. Yes, sir.

533 Q. Now, relate what it was the defendant said to you concerning your card. A. The defendant told me, "I want your card in order that the name may be changed, so as to protect you on your job against anything that may happen by the Government if they happen to outlaw the Communist Party and they would find out that you are a member, it would throw you out of your job."

Q. Did you give him your card? A. I did, sir.

Q. Do you recall anything else that took place on that occasion between you and the defendant? A. No. We did attend a meeting that was in progress. Lena Powers was presiding at this meeting.

Q. Was the defendant at the meeting you are speaking of? A. Yes, sir.

Q. Relate what was said at the meeting he was at. A. Lena was advocating that the Communist Party support

a bus strike which was in progress in New York at that time along Avenue A, and she requested that the comrades, in the form of a delegation, go to the Mayor and ask that adequate service, and that the buses be restored immediately.

Also, we spoke about a general membership meeting to be held at Hennington Hall at a later date, and also there was a plea for funds, as it was stated that the funds in the Party were very low and that some form, such as a
534 dance or a raffle, would have to be conducted, so as to raise money within the Party.

Q. Now, you mentioned Lena. Who is that? A. That is Sema Sverdlove.

Q. Sema is her real name? A. Her real name, yes.

Q. How do you spell that name? A. S-e-m-a S-v-e-r-d-l-o-v-e.

• • • •

Q. Will you relate the time and place and who were present and what occurred in the presence of this defendant? A. The next meeting took place on September 3, 1940, at 44 Avenue C, about the hour of around 9 p. m. It was a regular branch meeting and Tony presided. He had just returned from his vacation with his wife, Edith Charles.

Q. You mean this defendant? A. This defendant, yes sir.

Q. Proceed. A. As the meeting was just about—shortly after it opened, Bob Appel came in and asked
535 to take the floor. He related that this was control week; that all the membership books, papers and records in the Communist Party were going to be burned, they were going to be destroyed.

This was an act so that there would be no record left to reveal his identity or any of the records pertaining to the Party.

Bob also stated that he wished we would pay our dues,

POOR COPY

as funds were very low, and then after Bob made his speech, Tony then took over. Tony asked for a delegation to go to Congressman Ellenstein's home. The Congressman from that district on the lower East Side of Manhattan.

We were to go there in protest of conscription, the act that was being fomented in Congress at that time. We were not to go as Communist members. We were to go as citizens.

Q. Now, what was the fact at that time with respect to the organizational structure of the Communist Party? A. Well, the organizational structure—are you referring from the national——

Q. You have mentioned the word "section" and you have mentioned the word "branch". Will you explain the meaning of those to us? A. Yes. The Communist Party has several sections that are located throughout the city within Assembly Districts. They take the same numerical number of Assembly District as is allotted by the
536 city and at the head of the section is a section organizer. He has an executive secretary, also executive educational director, and also executive daily worker manager.

After this section group organizer, they comprise a section executive committee. On that committee may be branch organizers and also various members of the section organization; any one of the officers of that section.

Q. Organizationally, what is the section composed of? A. The section is composed of many branches.

Q. Organizationally, what is a branch composed of? A. A branch consists of many groups.

Q. Now, what officers are connected with a branch? A. The branch organizer, the branch secretary, the educational director, the daily worker captain.

Q. Does the group have any leader or officer? A. A group does. It has a captain, a group captain.

Q. Now, you mentioned Bob Appel. Did he hold any

of the offices that you have mentioned at the time you are testifying about? A. He does.

Q. What was his office? A. He was the section organizer.

Q. At the time you are speaking of, did this defendant hold any office in that organizational structure? A.
537 He did.

Q. What was it? A. He was the branch organizer and also a member of the section executive committee.

Q. At a later time did he fill some other office in the organizational structure that you refer to? A. He does, yes.

Q. And what was that? A. That was the sectional educational director.

Q. Now do you have a present recollection of the next time that you saw——

Mr. Ford. I move that "he does" be stricken out.

The Court. When you say "does" do you mean as of the time you are speaking of that these respective men held offices?

The Witness. They did at their respective times; yes, sir.

By Mr. Kelley:

* * * *

Q. Relate the time and place, and who was present, and what occurred during the next occasion that you
538 met and talked with this defendant. A. The next meeting took place on September 5, about 9 p. m., at Avenue C and 10th Street.

Q. Was that in the building or outside? A. No, this was an open rally; open meeting.

Q. All right. Proceed. A. Presiding at this meeting was the defendant Tony Whales.

Q. Was there any platform there? A. A ladder was used.

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BLEED THROUGH

Q. What kind of a ladder? A. A regular step-ladder. I imagine about 7 or 8 feet high.

Q. Continue. A. The purpose of this meeting was to defeat conscription. Speakers were Edith Charles and Sid Weinstock, Communist Party members of the Sixth A. D.

Q. Is that the Edith Charles you referred to earlier as the wife of this defendant? A. It is, sir.

Q. Was this defendant present? A. Yes, sir.

Q. All right. Continue. A. The defendant opened the meeting by stating that this meeting was called
539 by the Communist Party of the Sixth A. D., that now is the time to run the neighborhood to defeat conscription; that he also urged that letters, telegrams, post cards, be sent to the Congressmen urging them that this bill must be defeated.

With that he introduced Edith Charles as the next speaker.

Q. Did he introduce her by that name? A. Comrade Edith was the name that was used.

Q. All right. Then what occurred? A. Then the speakers asked about—spoke about the evils of war, and so forth, and that this country was headed for a war, imperialist war, at that time, and that they urged that conscription be defeated at all costs.

At that time the next speaker was Comrade Sid Weinstock. Just before he was about ready to complete his speech, some of the neighbors brought the meeting to a rather hasty closing by throwing hot water in bags out of the windows. So we had to leave there and we went to another corner where some other groups were holding a meeting and a comrade by the name of Simon was holding this meeting.

• • • •

540 Q. Please relate the time and place, who were present, and what occurred at the next time you met and talked with the defendant. A. The next meeting

occurrred on September 16, at 44 Avenue C, about 9 p.m. It was a regular branch meeting of the Communist Party.

Q. Was this defendant present throughout that entire meeting? A. No, sir, he was not.

Q. Did he come into the meeting at any time? A. He did.

Q. Confining yourself to that period after he arrived, what occurred? A. Tony came into the meeting and asked to make a few remarks. He said that the expulsion of two comrades had come up and that he wanted to discuss it with the branch. He said that these comrades were not participating as Communists, they did not canvass, they were afraid to circulate as Communists, and he felt they should be expelled. What was the pleasure of the branch?

We discussed it and we recommended that the action be deferred, so in order that the comrades could go before the section executive committee.

• • • •

541 Q. Relate the time, place, who were present, and what occurred at your next meeting with the defendant? A. The next meeting took place October 14, 1940, at 44 Avenue C, about the hour of 9 p. m. There was a regular branch meeting of the Communist Party.

Q. Relate what took place in the presence of this defendant. A. The branch meeting had been in progress, and the defendant Tony came in and asked to make a speech. He told us that now the young men in the Communist Party must get into the Army so that we can disintegrate the morale of the men in order that the Communists may take over; that we could do a big job in helping the men with their grievances, forcing their fights, and teaching them Communism. In this way we could soon overthrow the capitalists and also take over control of the Army. We were to work on the officers as well as the men, and this job was especially assigned to young men of conscription age.

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Q. Had the conscription bill been passed by this time?

Mr. Ford. I object.

542 Mr. Kelley. If you know.

The Witness. Yes.

Mr. Ford. May I have an exception, your Honor?

The Court. Yes.

By. Mr. Kelley:

• • • •

Q. Relate the time and place, who was present, and what occurred at the time you next met the defendant. A. This event took place on Octover 17, at 44 Avenue C. As requested by Tony, I went there for the purpose of—to fold literature, to get the papers and pamphlets in order, and to give the office a general clean-up; that is, as far as the literature, to put it in its proper place, and so forth. While we were there we had conversation—

Q. Who do you mean by "we", now? A. The defendant, Lena Powers, and myself.

QQ. Did anyone else come to that meeting? A. No, just the three of us. We discussed the Charlie Chaplin film "The Great Dictator." I didn't see it, but

543 Lena had, and she related how wonderful it was, and so forth. Then the defendant asked me how I happened to join the Communist Party. I told him that being a Negro, southern-born, I was against discrimination, and so forth, and that I wanted to help my people as well as all minorities. That I had belonged at one time to the Democratic Party.

I said, "They didn't help us, and the Republican Party was no savior, they didn't help us," and I said, "The only people I could turn to were the Communists." That I was interested, and I wanted to be with them.

So the defendant asked me, he said, "Haven't you heard that Communists are radicals?"

I said, "No, I never heard that."

I said, "Well, how did you join?"

He said, "Well, I have always been a progressive and a radical."

He said, "Ever since I was a boy in Pennsylvania, my father was a radical and a leader. That I attended Williams College, where I graduated, and that I was the cause of my wife Edith Charles being in the party."

He said, "I got her in."

So at this time it was rather late. So we left our duties and went home.

• • • •

544 Q. Relate the time and place, who were present, and what occurred when you next saw the defendant. A. This was November 20, at 44 Avenue C, around about 9 p.m. Present at that time was the defendant, Bob Appel, and myself.

Just before the defendant came in—this was going on while he came in; we were burning the old records of the Communist Party. We were destroying all of the literature or anything that would designate us as being Communists. This was in preparation—

Q. Just a moment. Did you inquire in the presence of the defendant concerning the reason for the destruction of documents of that character?

Mr. Ford. I object, as leading.

The Court. Did you and the defendant have any discussion with reference to the burning of these papers?

The Witness. I do not remember, sir.

By Mr. Kelley:

Q. Proceed. A. At this time Tony came in and I explained to him the work that I was doing in organ-
545 izing the National Negro Congress. I explained how I had gotten the aid of several Negroes that had been Communist Party members and we were doing a very good job on getting the Congress started on each side.

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The defendant told me he was very pleased at the work that I was doing.

• • • •

Q. Relate the time and place, who were present, and what occurred when you next saw the defendant. A. The next event was a meeting that occurred on November 25, at 44 Avenue C, around the hour of 9 p.m. It was our regular branch meeting and at this meeting we discussed—the defendant was there—we discussed the Soviet picture, "The Great Beginning"; that the comrades were urged to take three tickets apiece for this picture and we were supposed to go in a body. Also, at this meeting, Mother Bloor's book, "We Are Many" was advocated and sold. Also at that time a new comrade came into the group by the name of Jean Turner.

Dues were collected, and after the business of
546 the meeting was over, the defendant, Tony Whales, adjourned the meeting.

• • • •

548 Q. Relate the time and place, who were present, and what occurred when you next saw and talked with the defendant. A. Our next meeting took place on December 2, 1940, at 220 Avenue A. That was the home of Comrade Joseph Lopez. This was a reg-
549 ular branch meeting of the Communist Party. The defendant Tony Whales was there and we issued out tickets—in fact, the defendant gave out tickets for the picture "The Great Beginning." He also advocated that we increase our recruit drive to get new members into the Party. He advocated that our funds be paid up and also that each comrade would have to bring in a new member; that we would have to submit a name, and this party's prospect would be inspected by the other comrades.

The defendant also announced that there was going

to be a general functionary's meeting to be held for the purpose of receiving the report on the Communist Party convention which had been held previously to this meeting.

Q. Have you indicated who were present there in the entirety? A. No, I have not, sir.

Q. Who were they? A. Joseph Lopez, Mary Farnum, Edith Charles, and I think Lena Powers was there, I am not sure of that right now.

Q. Would you be refreshed in that connection by looking at your report? A. I could, sir.

Q. Would you do so?

(The witness complied.)

• • • •

550 The Witness. Lena Powers was not there. The other was Clem DiGrazia. That was the name I had omitted.

By Mr. Kelley:

Q. What, if anything, did Edith Charles say at that meeting? A. I don't remember, sir, if she said anything then.

Q. Will you refresh yourself from your report and determine whether you can be refreshed in that connection? A. If it is in my report, I can, sir.

Q. Will you refer to it and see if there is anything in the report which will refresh your recollection as to anything that Edith Charles said at that meeting?

• • • •

The Witness. I have, sir.

By Mr. Kelley:

Q. Do you now have a recollection——

Mr. Ford (interposing). I object to anything about Edith Charles, the person not on trial here, and not named in the indictment.

The Court. Is this a part of the meeting attended by the defendant, sir?

POOR COPY

551 The Witness. Yes, sir.

The Court. Very well.

By Mr. Kelley:

Q. Have you refreshed yourself in connection with my suggestion? A. I have, sir.

Q. What is the fact? A. Edith Charles stated during the meeting that she had obtained a new job at Macy's, at 34th Street and Sixth Avenue, in Manhattan, at the book counter.

Q. That is, at a department store? A. Yes, sir.

Mr. Ford. I object to it on the ground that getting a job at Macy's book counter had nothing to do with Communism.

The Court. Do you desire to connect this up, sir?

Mr. Kelley. It is my desire to establish as far as possible what was said by the defendant at these meetings.

The Court. If you have no other purpose than that, sir, we will leave this.

Mr. Ford. May I, Your Honor, move that you withdraw a juror and declare a mistrial, because of the bringing out of that?

The Court. I will deny your motion, sir.

Mr. Ford. Exception.

The Court. I will instruct the jury that it is not
552 material to this case whether Edith Charles was in Macy's or where she was, other than in connection with the particular meeting that the witness spoke of.

By Mr. Kelley:

* * * *

Q. State the time and place, who were present, and what occurred at the occasion of your next meeting with the defendant. A. The next meeting took place on December 9, at 44 Avenue C, around the hour of 9 p.m. It was a regular branch meeting and Lena Powers was supposed to preside at this meeting but she turned the meeting over to Jean Turner. The defendant was present at

this meeting and he reported on the sales of the Daily Worker and also the Sunday Worker. He also announced that "We are now in competition with other branches." That is, to see who could sell the most papers.

And a deadline was set—Lenin Memorial Day. That was supposed to be the deadline for this contest.

553 The defendant also spoke about the Smith bill, which at that time was coming up in Congress, and he advocated the defeat of this bill.

Q. Did he state anything concerning what the bill provided? A. He did.

• • • •

Q. State it. A. The defendant stated that the Smith bill which would outlaw any strikes was against any of the principles of the Communists and that we were urged to defeat its passage by getting to the public, writ-

554 ing to our Congressmen, and the Communist Party members were urged to make leaflets and circulate these leaflets so that this bill would be defeated.

Q. Were any papers distributed at that meeting? A. Yes, they were.

• • • •

Q. I direct your attention particularly to what has been marked for identification Government's Exhibit 33-N-1 and Government's Exhibit 33-N-2.

Can you identify them? A. I can, sir.

Q. What are they? A. These are pamphlets, a pamphlet and a leaflet that was distributed at that Communist Party meeting of that date.

Mr. Kelley. The Government offers those two exhibits also, your Honor.

Mr. Ford. I object.

The Court. They will be treated as exhibits allowing counsel to examine prior to the receipt of it.

By Mr. Kelley:

• • • •

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555 Q. Relate the time, place, who were present, and what occurred when you next saw the defendant. A. Our next meeting took place on December 16 at 22 Avenue A in the home of Joseph Lopez. This was a regular branch meeting.

At this meeting the defendant presided and we reported on the number of recruits that we had taken into the Party.

Also we discussed the Soviet picture called "The Mannerheim Line."

Also we made some leaflets, or we were learning how to make leaflets, and also how to prepare a mimeograph machine and how to stencil. That was the chief purpose of that meeting.

• • • •

Q. Relate the time and place, who were present,
556 and what occurred when you next saw the defendant.

A. The next time was January 31 at 143 Suffolk Street. The occasion was a social affair sponsored by the National Negro Congress of the East Side. It was a dance.

During the intermission I was asked to be the chairman or master of ceremonies, which I did, and I introduced the defendant along with one other, Miss Pearl Trusty, who was also attending that affair.

Q. What was the substance of your introduction? A. The substance of my introduction was that I introduced Tony Whales, a member of the Communist Party.

• • • •

Q. State when and where and who were present and what occurred at the next time you met this defendant. A. The next time was February 11, 1941. I had the occasion to go to the Communist Party headquarters for the Fourth and Sixth A. D., which was located at 67 Clinton Street.

Q. Will you point out that location on the map, Government's Map No. 1?

(The witness stepped down to the blackboard to
557 indicate.)

A. 67 Clinton Street is located on the west side of Clinton between Stanton and Ritten Streets, about four doors from the corner and over a drugstore. The structure was about a four-story building and we occupied the second floor.

Q. What was the situation at that time with respect to the headquarters you have testified about at 44 Avenue C?

(The witness resumed the stand.)

A. At 44 Avenue C we had to move from there, we were unable to pay the rent; so we moved out, and we disbanded that place at that time.

So we amalgamated with the Fourth A. D., and then we were known as the Fourth and Sixth A. D.

Q. Now relate what occurred at the meeting that you have already identified. A. I went to 67 Clinton Street. There I met the defendant, who introduced me to the section organizer, the new one. That was Harry Daniels. I reported on the work I was doing in the National Negro Congress and the defendant suggested that we have in our organization whites from other organizations such as front organizations, and Jewish workers, and also people people from the peace movement we were urged to bring in.

Of course, the defendant stated that the Communist Party would be back of us and would give us all their assistance.

The Court. Back of who?

558 The Witness. The National Negro Congress, the organization of which I was head.

Also an appointment was made for a future date wherein the Communist Party members, that was Negroes, in the National Negro Congress, were urged, in fact, we were supposed to meet at 67 Clinton Street that follow-

ing Saturday afternoon with the section organizer and the defendant to give a detailed report on our activities and to formulate any future plan.

• • • •

Q. Relate the time and place, who were present, and what occurred when you next met and talked with the defendant. A. The next time was February 22, about 3 p.m., at 67 Clinton Street. I went there to make a detailed report to members of the section executive committee composed of Harry Daniels, Tony Whales, Meyer Zanger, and a comrade I only knew by the first name of Seymour.

I gave a detailed report on the National Negro Congress, that is, its membership, its aim, and a prospectus in general. I also discussed the literature for the National Negro Congress and in that end the section educa-
559 tional director of the Communist Party in that area, which was Tony Whales, was assigned to help me to compose leaflets and literature for the National Negro Congress, and we were to use the Communist Party's offices and also their machines.

Q. Where did you go after that meeting?

• • • •

The Witness. After I left that meeting at 67 Clinton Street, the defendant Tony invited me to his home to have dinner. I did go there and while we were there we discussed leaflets and pamphlets and literature for the Congress. We made up a leaflet for the Congress about discrimination——

By Mr. Kelley:

Q. What do you mean by "made up one"? A. That is, to form one, to put the body of it, to use your
560 own words in protest of something or to enlighten someone about something. You form a leaflet to be circulated.

• • • •

561 Q. Just a moment. Referring to the meeting which you testified you attended——

The Court. On the 22nd?

Mr. Kelley. On the 22nd of February, yes.

By Mr. Kelley:

Q. Was any document distributed at that meeting? A. Yes, it was.

• • • •

562 Q. Mr. Drew, I show you what has been marked for identification Government's 33-R-1 for identification. Can you identify it? A. I do.

Q. What is it? A. This is a leaflet that Earl Browder be freed and calling for a mass rally.

Mr. Kelley. I offer it in evidence.

Mr. Ford. I object.

• • • •

563 Q. What was the date and place of your next meeting with this defendant?

A. The next time was on February 28 at 643 Sixth Street, Apartment 5(c). That was the home of the defendant.

I went there to get some leaflets which I had to have printed and also I got the bill of cost.

The defendant at that time was having a Communist Party meeting at his home, so after I picked up the leaflets and the bill I immediately left and went to another meeting.

• • • •

Q. State the time and place, who were present, and what occurred on the occasion of your next meeting with the defendant. A. The next meeting took place on

564 March 18, 1941, at the Church of the Living God, 292 Monroe Street, Manhattan. The purpose was an open meeting sponsored by the National Negro Congress. The meeting was opened by me. I introduced the chairman, George Smith, who in turn introduced the following speakers:

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Louis Harper, Tony Whales, and myself.

We had music by the choir and also by one of the members of the Congress.

Literature, National Negro Congress literature, was distributed and a collection was taken up which was turned over to the Church.

Q. By what name was this defendant introduced at that gathering? A. As Tony Whales.

Q. You say certain documents were distributed at that meeting? A. Yes, sir.

• • • •

Q. Mr. Drew, I show you what has been marked Government's Exhibit 33-T-1 for identification. Can
565 you identify this? A. I do sir.

Q. What is it? A. It is a leaflet.

Q. Where did you obtain it? A. I obtained it at the Church of the Living God at this meeting, as was described.

• • • •

Q. Relate the date, place, and who were present, and what occurred when you next saw the defendant. A. That was on April 3, 1941, at 815 East Fifth Street. That was the home of George and Beatrice Smith.

This meeting was called by me of all the Communist Party members in the National Negro Congress, and we also included progressives from other organizations. Those in attendance were George Smith, Beatrice
566 Smith, Tony Whales, Regina Benzera, William Kerner, Harry Palmer, Harvey Maddox, and myself, and Osie Smith.

Tony stated that he could not stay to this meeting but that he announced that Louis Harper was going to conduct a class for the Communist Party with Negroes from the Congress and other organizations, and he wanted all the colored comrades to attend this class.

He stated that we needed studying, that we needed an

education along the party line, and that it would help our organization.

Q. Now, do you have a present recollection of the date and place of your next meeting with the defendant?

• • • •

567 A. It took place on April 4, 1941, at the home of George Smith, 815 East Fifth Street.

Those that attended this meeting—it was sponsored by the National Negro Congress, and those that attended this meeting were George Smith, Beatrice Smith, Harry Palmer, Harvey Maddox, Regina Benzera, William Kerner, and Osie Smith, including myself.

The Court. Excuse me. Was the defendant there?

The Witness. Yes, sir, the defendant was there.

At this meeting, a political discussion was given by the defendant, and the defendant spoke about how many Communists were in this country at this time, and he said that we outnumbered the number of Communists in
568 Russia during 1917 when the revolution took place.

He said that now was the time for revolution; that the Communists could have a revolution in this country.

He also advocated that the comrades attend Harper's class. Also the Workers' School for the betterment in our organization.

• • • •

Q. Relate the time and place, who were present, and what occurred when you next met and talked with the defendant. A. Our next meeting took place on May 28, 1941, at the home of the defendant at 643 East Sixth Street, Apartment 5(c).

The leading members of the National Negro Congress were to meet with the—or did meet with the secretary of the executive committee of the Communist Party. Those present were Louis Harper, Harry Palmer, Tony Whales,

Harry Daniels, Meyer Zanger, Emily, Frances Sutton. I think I named Sammy Kantor as being the other one who was there.

Q. Relate now what took place. A. Well, at this meeting we reported—when I say "we", Harper made
569 up a report for the National Negro Congress to the section executive committee, explaining why the National Negro Congress had its downfall on the East Side, and we had proposals how to rebuild the National Negro Congress without the visible aid of the Communist Party.

Our organization had declined, and the Communist Party was making up a program on how we could get the National Negro Congress on a footing again.

• • • •

576 *George Hewitt*

was called as a witness for and on behalf of the United States. See p. 254 et seq. of this Appendix for Hewitt's direct and earlier cross-examination.

• • • •

Cross-Examination—Resumed

By Mr. Ford:

Q. Mr. Hewitt, yesterday you will recall being called in here and producing the passport; right. A. That is right.

Q. And this is the passport here (indicating)? A. That is it.

Q. Now, the name that you used is William Jackson. Is that correct—as stated here (indicating)? A. That is right.

577 Q. Now, when you went to apply to the State Department for your passport, did you fill out a form similar to that (indicating)? Would you just look at it, please? A. I believe I did.

Q. Pardon me? A. I believe I did.

Mr. Ford. Mr. Clerk, would you mark this paper Defendant's Exhibit 5 for identification, please?

• • • •

By Mr. Ford:

Q. And in making out that form for the State Department, the birth affidavit, you went under the name of William Jackson? A. Yes. I was instructed by the party to do that.

Q. My question is, did you go under the name of William Jackson? A. William Jackson.

Q. And you filled that out that way? A. I believe so.

Q. And then at the bottom you will notice "Subscribed and sworn to before me."

Did you swear in that paper which you filed with the State Department that your name was William Jackson?

A. Yes, sir.

578

* * * *

Q. I hand you what has been marked Defendant's Exhibit No. 6. I will hand you that form, a passport application, and ask you to look over that. Did you fill that application out and use the name William Jackson? A. I don't recall this, sir.

Q. Do you recall making out a passport application? A. I do recall that a lawyer was assigned to me by the Communist Party, who did much of this.

Q. Well, now, was an application made out by the Department of State, a passport application? Did he use that, this lawyer you just referred to? A. I believe so; vaguely. Because I, at that time——

Q. I will ask you just to look at that and see the information it calls for and see if that will refresh your recollection. A. No, I don't recall.

579 Q. Do you recall making out and swearing to any other form, under the name of William Jackson, then Defendant's No. 5. A. All of this is vague.

Q. When you say "all of this is vague," what do you mean it is all vague? A. Because at that time I was rather young——

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The Court. What is the date of it, sir?

The Witness. 1930 or 1929.

By Mr. Ford:

Q. How old were you then? A. Well, about 15 years younger than I am now.

The Court. Are you 41, sir?

The Witness. 41.

By Mr. Ford:

Q. Would you say you were about 26? A. Maybe less than that.

The Court. Approximately that. It is a mathematical situation.

The Witness. But what I meant by "young" was that I was whisked into the Communist Party during a period that Stalin had demanded that they send Negroes——

Mr. Ford (interposing). If your Honor please, I submit this is not responsive.

580 The Court. No, that is not responsive.

By Mr. Ford:

Q. What do you mean when you say you are vague about the forms or the applications that you made out to the State Department? A. Well, I will explain, if you will permit me. I can't say it in one word.

The Court. Do you want the answer, Mr. Ford?

By Mr. Ford:

Q. Let me ask you this: I noticed you said that a lawyer was assigned to you by the Communist Party to make it out. Now, you are not vague about that, are you? A. No.

Q. Now, after you got the passport and you went to a foreign country, to go from that country to another country you had to get a visa, did you not? A. I went once, I believe coming out of Russia to the Berlin American Consulate, but at other times certain Communists who were couriers did all of this work. We had nothing to do with it.

Q. My question is, did you obtain and have with you when you traveled from one country to another, a visa

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issued by the country which you were leaving to the country to which you were going? A. Well, isn't this passport the visa. This was the thing I always was
581 given. This (indicating).

The Court. Is that the only document you received when you were traveling?

The Witness. Yes, sir.

By Mr. Ford:

Q. You had to take this back. This book was with you? A. That is right.

Q. Then as you went from one country to the other you had to take this book to the consul in this country, did you not, the country you were leaving? A. This was performed by a responsible comrade in charge.

Q. So that you did not appear with your book in front of a consul in the other countries as you were going? A. I remember once. I said the Berlin Consulate.

Q. Now, when you did that, you had to make representation to that consul, did you not, under oath, that you were William Jackson? A. That is right.

Q. Now, did you sign any passport application under oath? A. Well, I believe that concerned this, yes.

Q. Did you sign and swear to any passport application under oath in regard to this passport? A. Yes, sir.

582 Q. Did you make application at any time for any passport other than this? A. No.

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586 *Archer S. Drew*

• • • •

Direct Examination—Resumed

• • • •

Q. Mr. Drew, I believe you made reference at the close

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of your testimony yesterday to events that took place on the 28th day of May, 1941.

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• • • •

Q. Relate the time and place, who were present, and what occurred on the occasion of your next meeting with the defendant. A. The next meeting occurred on September 3. I had occasion to go to Communist Party headquarters at 67 Clinton Street, and there I met the defendant, Tony Whales, who informed me that Louis Harper had been made vice president of the Peoples Committee, the East Side Peoples Committee.

I told him I thought that was a very good move
588 and I suggested that some time Harper, being a member of the Negro Congress, that we should have have someone represented on that committee; so Harper was made a vice president of that committee.

• • • •

Q. Relate the time and place, who were present, and what took place on that next occasion. A. The date was September 22. It was about 10 p.m., at Mary Farnum's home, at 520 East 13th Street.

Q. Did you know her by any other name? A. I did.

Q. What? A. Mary Fernandez.

Q. What was her real name? A. Mary Fernandez.

Q. Continue. A. We were scheduled to have an executive committee meeting there of the Communist Party, but due to some unforeseen reason the meeting was
589 canceled; so I lingered there and I was talking to Mary when the defendant Tony Whales came in.

He was carrying some leaflets that he gave to Mary and told Mary that the comrades would have to distribute them, and Mary was given that responsibility.

I took some of the leaflets. I told him I would distribute some, and they were in regard to a parade of the nation-

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alities, and also an article from the Italian paper Il Progressio.

• • • •

Q. Mr. Drew, I show you what has been marked for identification Government's Exhibits 33-X-1, 33-X-2, and 33-X-3, and ask you whether you can identify them.
590 A. I can, sir.

Q. What are they? A. They are leaflets, sir.

Q. Where did you obtain them? A. I obtained these leaflets at 520 East 13th Street, at the home of Mary Farnum.

Q. Do you know how they arrived at that meeting? A. I do, sir.

Q. How? A. They were brought there by Tony Whales, the defendant.

• • • •

646 *Cross-Examination—Resumed*

By Mr. Ford:

Q. Now, what was the date that you said you received a membership card from the Communist Party? A.
647 July 22, 1940.

Q. And how long did you have possession of that card from July 22, 1940? A. I had possession about a little over a month or maybe a month and a half.

Q. And during that time, that month, you were visiting your headquarters somewhat regularly, maybe every day or sometimes every two days, or sometimes every three days? A. Which headquarters are you referring to, sir?

Q. Police, the squad headquarters. A. Yes, sir.

Q. And did you ever make a photostatic copy during that month of your membership card and leave the photostatic copy in your files at your squad headquarters? A. No, sir.

Q. Other than the name of—Is it Beasley, you said? A. Easley.

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Q. Other than that name, did you have any other name in the Communist Party? A. Yes, sir.

Q. What was it? A. William Johnson.

Q. And was that ever written on a membership card of any kind? A. Yes, sir.

Q. And when was it you got that card? A. I
648 imagine it was about two months after the original issue.

Q. And how long did you have that card? A. It was not very long, sir, I imagine about a month.

Q. Now, during that month that you had that card in that name, were you also visited at the headquarters the same as you had before? A. Yes, sir.

Q. Did you have a photostatic copy made of that and placed among your records? A. No, sir.

Q. Did you organize or help to organize a branch of the National Negro Congress in New York? A. I did, sir.

Q. And who, if anyone, helped you organize that branch? A. Louis Harper, George Smith, Beatrice Smith, Harry Palmer.

Q. And what date was that that you organized that branch? A. I don't know the exact date, sir.

Q. Will you give me approximately the date? A. I think it was around September of 1940.

Q. And were you one of the original organizers? A. Of the East Side Council; yes.

Q. Of the National Colored Congress? A. Of
649 the East Side Council; yes.

Q. Of that branch? A. Yes.

Q. Did you solicit memberships for that Congress? A. I did.

Q. And did you solicit that membership from the area around in the East Side; the lower East Side? A. I did.

The Court. I ask you to approach the bench, sir.

(Counsel for both sides approached the bench and conferred with the Court, in a low tone of voice, as follows:)

The Court. What is your purpose?

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Mr. Ford. My purpose is to develop that Harper, that all this time he was with Harper, a Government witness here, over quite a period of time, and that Harper, having already testified that he ceased to be a Communist in 1938, I am going to show by this witness, his testimony, that that is not so.

The Court. Well, let's get to that.

Mr. Ford. That is number one.

The Court. All right, sir.

Mr. Ford. The second phase of it is that he testified on the stand yesterday that after giving his history and his schooling, this witness on direct, he said he always had his people——

650 The Court (interposing). Who, this witness?

Mr. Ford. Yes, sir.

The Court. I don't recall that.

Mr. Kelley. And I don't recall that either.

Mr. Ford. Well, it is on that basis that I am saying that. I may be wrong.

The Court. Yes. That isn't my recollection.

Mr. Ford. But because I believe that will show that——

The Court (interposing). I will deny that part of it at this time, sir.

Mr. Ford. Yes, sir. And if the record turns out that I am correct, had I been permitted, I would have developed that he did the following things:

First, because of the testimony of the captain who organized the squad who said that the National Negro Congress was one of the organizations that he delegated them to investigate—I am going to show that he created, this witness, that organization—that he induced and had people other than Communists come and address the association; that the people he solicited were colored people and other nationalities; and,

Secondly, again, as to the meeting, he testified of the National Colored Congress being held in that church, and he described all of its details and what was stated by each.

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I wanted to develop all of those phases of it under
651 the heading of National Negro Congress.

The Court. I will not hear you on anything of that sort save those meetings where he specifically attended, sir, and where Mr. Marzani was in attendance.

Mr. Ford. That is your Honor's ruling?

The Court. Yes.

Mr. Ford. May I have an exception on this limitation for cross-examination?

The Court. Yes. I understand from the pleadings that the issue in this case is whether or not certain statements were made knowingly and wilfully and falsely.

Mr. Ford. What I have to say, your Honor, I will assume that is correct, and had the Government had that realization and limited their testimony to that realization, I would not have attempted any of this cross-examination, but what I am trying to cross-examine him about is all of the things the Government put into this case and discussed in this case, by witnesses in front of the jury, and it is only because of the fact that I think he went outside of it, that I should be permitted to go outside of it.

The Court. I agree with you, and the Court will permit you to go into anything which was brought out on any of these occasions as to which there is testimony, sir.

Mr. Ford. And I also offer these questions to
652 question his credibility, as a basis for testing his credibility.

The Court. I will not go into that. I will permit you to go into and attack his credibility as to anything that he has dealt with on those particular occasions.

I agree with you that we have gone afield, sir, and I agree with you that you can go to the extent of meeting those situations, but only as to those.

Mr. Ford. I have other questions written out which I worked on yesterday in order to save time today. If your Honor feels that before I cross-examine him on that——

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The Court (interposing). You have made a proffer at the bench, sir. Have you finished that?

Mr. Ford. All right. Yes, indeed.

The Court. All right, sir.

• • • •

653 Mr. Ford. I would like to ask this witness whether he did or did not testify yesterday that he was out always to help his people, whether he testified that way.

The Court. I don't think I will permit that.

Mr. Ford. All right, sir. And by people, you meant colored people?

The Court. Yes. It does not matter whether they are colored or Italian or Jew or what.

Mr. Ford. In view of the fact that he did it is the only reason.

654 The Court. I don't think he did it.

(Counsel returned to the trial table.)

By Mr. Ford:

Q. Now, on yesterday when you used the word "comrade" in connection with a person's name, do you mean by the use of that word that they are a member of the Communist Party and that is why you call them "comrade"? A. I did, yes.

Q. And yesterday, you mentioned many names which you used the prefix "comrade" so-and-so in front of correct? A. That is right, sir.

• • • •

656 Q. Now, you testified—and I will direct your attention and locate you to this occasion—when there
657 was a meeting of the National Negro Congress in the Church of the Living God; do you remember that incident now? A. Yes, sir.

Q. Now, at that meeting were there people other than Communists there at that meeting? A. Yes, sir.

Q. And were those people from the neighborhood? A. I presume so; yes, sir.

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Q. And did any speaker at that meeting get up and discuss Communism? A. No, sir.

Q. In 1940 and 1941—and I am directing your attention to a man you have identified as Harper now, the Harper that you mentioned, is that the same Harper who is a witness in this case? A. Yes, sir.

Q. Now, in 1940, what communistic activities did Harper join in with you, just generally? A. None that I know of.

Q. In 1941 what communistic activities or meetings did Harper join in with you, to your knowledge? A. I don't recall any, sir.

Q. In 1940 and 1941, was Harper a member of the Communist Party? A. I don't know that, sir.

• • • •

659 By Mr. Ford:

Q. Did you, in November of 1940, make a statement that you were going to the home of Comrade
660 Louis Harper? A. I did, sir.

• • • •

663 Q. In December did you make an oral or a written statement—December 1940—to the effect that you were going to Comrade Louis Harper's home? A. Well, I can't recall, sir. If I could see my reports, maybe I could refresh myself.

Mr. Ford. May he look at his report?

The Court. Yes, sir.

(The report was handed to the witness.)

The Witness. I did, sir.

By Mr. Ford:

Q. Did you, on May 28, make an oral or written statement to the effect that "Harper and I are responsible to the C. P. for development"?

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664 The Witness. Yes, sir; I did, sir.

• • • •

665 Q. And did you, on the same date, make a written or an oral statement that Harper outline the role of the Party in connection with the Congress? A. Yes, sir.

Q. By the way, when you use the initials "C.P.", you mean Communist Party? A. I do.

• • • •

The Court. Do I understand you are testing him now for the purpose of credibility?

666 Mr. Ford. Yes, and to use his admissions against him when he said Harper was not a member of the Party.

Mr. Kelley. He said he didn't know if he was a member of the Party a few minutes ago.

Mr. Ford. Then this would contradict that he did know. This would show that he did know it. Either way it would show a difference.

• • • •

667 Q. In 1940 and 1941, whenever you heard a person speak against police brutality, did you consider that person a Communist?

The Court. Just a minute. You need not answer that question.

Mr. Ford. May we approach the bench?

The Court. Yes.

668 (Counsel for both sides approached the bench and conferred with the Court, in a low tone of voice, as follows:)

Mr. Ford. I was going to ask him the following, separately:

When he heard a person speak against police brutality, did he consider that person a Communist because of that expression of thought.

Then the second one was: "When you heard a person advocate a vote for Congressman Marcantonio, did you consider that person a Communist because of that expression?"

"If you heard a person speak that people should get together for the purpose of maintaining peace, did you think that person a Communist?"

"Did you, if a person went to a Congressman's house as a citizen to protest proposed legislation, would you consider that person a Communist because of making that effort and asking the Congressman to do that?"

"If a person went to see the moving picture 'Great Dictator' with Charlie Chaplin, did you consider that person who saw the movie or who suggested that others go see it be considered by you a Communist?"

"Would you consider a Communist a person who was opposed to the Smith bill, which would outlaw strikes, to which you referred in your direct examination?"

669 These topics, your Honor, are things that he spoke about on his direct examination, and that is why I framed them particularly in that way.

The Court. I will overrule them as not being material to this issue.

Mr. Ford. May I have an exception?

The Court. Yes.

(Counsel returned to the trial table.)

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751 *George Hewitt*

was called as a witness for and on behalf of the defendant

Direct Examination

By Mr. Ford:

Q. Now, I am handing you Defendant's Exhibit No. 7, which consists of five photostat sheets, and I wish you

would first look at them—and by the way, some of these sheets, while they look blank, they have something written on the back of them—would you take those and look at those sheets, please (handing papers to the witness)? A. Yes, sir.

Q. Now, I will refer to the first sheet, and for identification, it reads:

"Application for Renewal of Passport";

and I will ask you whether or not, if you will start at the top and go down through it, whether your handwriting appears on that application. A. This one (indicating).

Q. And he points out "Signature of applicant, William Jackson."

Now, I will ask you as to the second sheet—I will ask you as to the third sheet, which is headed:

752 "Passport Application";

and I will ask you if you will point out your handwriting as it appears on that sheet. A. This one (indicating).

Q. And he points out "William Jackson, Name in full."

Now take the second handwriting. A. This is it (indicating).

Q. Blackville, South Carolina? A. Yes.

Q. How about the date? A. Date?

Q. June 27.

Now, what other handwriting? Is that your handwriting (indicating)? A. That seems to be scribbled a bit there.

Q. Yes. Well, whatever your handwriting is. A. Right there is my handwriting (indicating).

Q. That is "Lake Tuxway"? A. That is right.

Q. And the next handwriting right underneath that, the words "not living". A. Also my handwriting.

Q. And the handwriting "deceased"; is that yours? A. No; that is not mine.

753 Q. Now, going down, we come to this, and he

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identifies the following as his handwriting: "555 Madison Street." A. Yes.

Q. Is the word "Brooklyn" yours? A. That is right.

Q. And the word "New York" yours? A. That is right.

Q. Now, going down further, where is the next place? A. I don't see any other place.

Q. I will ask you whether "Traveling with orchestra, England, France," is yours. A. No. That is not my handwriting.

Q. That is not yours? A. No. That is not mine. That is not my handwriting.

Q. That is not yours? A. No. That is not my handwriting.

Q. Now, turning over to the fourth sheet, and I will ask you, up on the top where it says "Oath of allegiance," underneath that, is that your handwriting, "William Jackson"? A. That is my handwriting; yes.

Q. Then underneath that it has a description of the applicant.

Now, is the "5" and "feet" yours? A. Yes.

The Court. By "his," do you mean his handwriting, sir?

Mr. Ford. Yes; his handwriting.

754 By Mr. Ford:

Q. And is "Inches, 5," yours? A. Yes.

Q. And the age "24," is that yours? A. Yes.

Q. And hair; "black"? A. Black.

Q. And brown eyes? A. Brown eyes.

Q. Place of birth, "Blackville"; that isn't yours? A. No, sir.

Q. And North Carolina? A. No, sir.

Q. How about the date of birth? A. That is not my handwriting.

Q. "Salesman—Helix Company"; is that yours? A. That is not mine.

Q. How about the "unknown" part? A. That isn't mine.

Q. Down underneath that appears the name again, "Willie Jackson." A. That is mine.

Q. And "555 Madison Street"; is that yours?

755 A. That is crossed out; but that is mine, yes.

Q. And "555 Madison" is crossed out? A. That is right.

Q. And then "City and State," it says "Brooklyn, New York." Is this your handwriting? A. That is right.

Q. And that likewise is crossed out, isn't it? A. Yes, sir.

Q. And then down here is a "George Lagree, 24." A. That isn't mine.

Q. Now, taking up the first sheet again, where were you when you made that out, that first sheet? A. Let's look at it to make sure.

Q. Just this first sheet I am asking about.

• • • •

Mr. Ford. Yes; if you remember.

The Witness. I am vague where it was.

• • • •

The Court. What is the date of it, sir?

Mr. Ford. This is the first sheet, your Honor.

The Witness. Isn't that the date there (indicating)?

Mr. Ford. 9/1/42.

The Witness. No. August 1.

756 The Court. What is the date of the application?

Mr. Ford. It says up here "Filed, Received, 9/1/32."

By Mr. Ford:

Q. Now, do you know who was with you when you made it out? A. As I stated before, the Communist Party——

Q. Am I to—— A. (Interposing). Yes, they were the people who called me to the office in the National Committee.

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Q. My question was "who".

The Court. Do you know who it was, sir?

The Witness. No, I don't know the name, a lawyer who was appointed with a person, a plumber.

Mr. Ford. May I submit, he answered the question when he said it was a lawyer who made it out.

My question was "Who made it out".

The Court. Did you say it was a lawyer for the Communist Party? Is that what you said?

The Witness. That is right.

Mr. Ford. I move that "Communist Party" go out.

The Court. You wanted him to identify it, sir.

Mr. Ford. My question was "Who made it out," may it please your Honor.

By Mr. Ford:

Q. Now, the lawyer who made it out, do you know his name? A. No, I can't recall his name.

757 Q. Do you know at what address he had his office, or the name of the building? A. Well, as I recall, I did not go to his office. He came to the state headquarters of the Communist Party.

Q. So, would your answer be you do not know the address of his office, the name of the building where his office was? A. No. I was just told that he was a lawyer to represent the Party.

Q. Now, did he write anything, the lawyer write anything on that sheet?

The Court. If you know.

The Witness. No; I don't see it.

Mr. Ford. By the way, all my questions are directed to "If you know."

The Witness. No; I don't know.

By Mr. Ford:

Q. Now we will take up sheet number 2—well, I am not taking that sheet up because it merely states what the Government did. Obviously he didn't do that.

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Now I am giving you sheet number 3, the passport application, this sheet here (indicating).

Now I will ask you, if you know, where that was
758 made out or filled in A. No. I am vague about the place.

Q. I will ask you if you know who made it out. A. Well, no.

Q. I will ask you whether or not—whether it was or was not, if you know, made out at the same time that you made out number 1. A. That? I don't know.

Q. Now I will take up number 4, the fourth sheet,—

And when I speak of "4", your Honor, I am speaking of the sequence they appear in the exhibits.

The Court. Yes.

By Mr. Ford:

Q. Directing your attention to "oath of allegiance" under which appears your name, on this exhibit (indicating). A. I know about this one (indicating).

Q. Now, where was that made out?

The Court. What does "this one" mean?

Mr. Ford. I am speaking of number 3, your Honor.

The Witness. This was made with an attorney—lawyer—one of these lawyers who they describe as a person that would identify a person going to and from another place.

By Mr. Ford:

Q. Where were you when number 3 was made out? A. I was with this Mr. George Lagree, who was the wit-
759 ness, another party comrade. That was not his real name. He was a plumber. His real name was Welch.

Q. And is he the one that wrote "George Lagree" here? A. Yes, sir.

Q. And at the time that he wrote "George Lagree," you knew that that was not his name, didn't you? A. I didn't.

Q. You thought that was his name? A. I thought that was his real name.

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Q. Now, where was this made out? A. As I stated, in this notary public's office.

Q. In New York City? A. In New York City.

Q. And did you swear to it in front of that notary? A. I was instructed to.

Q. My question is, did you swear to it in front of that notary. A. I did.

Q. Now, was that made out, the one you have just identified, at the same time 1 and 2 were made out? A. I don't believe so.

Q. Now, coming to the fourth sheet, "Affidavit of birth, to be submitted with the application for American passport."

Now, did you write that information in there (indicating)? A. No, sir.

760 Q. Or any of it? A. Another witness, Mr. Simons.

Q. Did you write any of it? A. No, I didn't write any of it.

Q. Is this your handwriting, "William Jackson"? A. That isn't.

Q. Where was that made out? A. I believe in the same notary public's office.

Q. And do you recall whether or not that was made out at the time 1 and 2 were made out? A. I don't recollect, to be exact.

Q Now, at the time you were present on those different occasions at those different places, you knew, did you not, that the matters that were being set forth therein were false and not true? A. I did.

Q. And did you know that it was being given—that false information was being given to the Government of the United States? A. I did.

Q. And directing your attention to this exhibit, "Oath of allegiance," where it says further, "I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic,

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that I will bear true faith and allegiance to the same, and that I take the oath freely without any mental reser-
761 vation or purpose of evasion, so help me God," and then signed it.

Now, at the time you did that, did you mean that? A. I did.

Q. You are sure of that? A. Positive.

Q. That was not false? A. That was not false.

Mr. Ford. At this time, may it please your Honor, I offer in evidence Defendant's Exhibit number 7.

The Court. Any objection, Mr. Kelley?

Mr. Kelley. No. I understood it was already offered.

Mr. Ford. No. I had to identify it first.

The Court. It will be received.

• • • •

762 Mr. Ford. "Application for renewal of passport. Caution: Extension of expressly limited passports must be applied for in conformity with the rules and regulations prescribed by the President and the Secretary of State, pursuant to law, I, the undersigned, hereby apply for a renewal of the period of validity of my passport, the number and date of which appear herein." It gives the renewal series and then it gives passport number 303597, issued on August 8, 1930, at Washington.

763 "I, William Jackson, a native American citizen," —and "never married" is underlined, and "my husband," that is stricken out.

"My legal residence is New York City, New York." "I represent," and that is left blank; "Name of person or organization." Then you see there is a block which has just type on it.

Then it is signed "William Jackson, 17 Rue Street, Paris, France."

"I certify that the person to whom the above passport was issued appeared before me in person and swore to and signed the above application on the 16th day of Au-

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gust, 1932. John F. Stone, American Vice Consul, Berlin, Germany."

The next is headed "Passport application," and I am skipping some typed parts on it.

"United States of America, State of New York, County of New York. I, William Jackson, a native citizen, hereby apply to the Department of State at Washington for a passport. I solemnly swear that I was born at Blackville, South Carolina, Jne 27, 1906; that I was never married; that my father"——And then there is writing scratched out, and over it is written "James Jackson,"—

—"was born at Lake Tuxway, North Carolina, and is now residing at—not living—deceased."

764 "I am domiciled in the United States, my permanent residence being 555 Madison Street, in the City of Brooklyn, State of New York."

"I am about to go abroad temporarily and intend to return to the United States within 12 months with the purpose of residing and performing the duties of citizenship therein. I desire a passport for use in visiting the countries herein named for the following purposes: England, France, traveling with orchestra."

Then the next is headed "Oath of allegiance."

"Further, I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation or purpose of evasion, so help me God."

"William Jackson."

And here there is a notary seal, and there is a date that is indistinguishable and there is a name that is indistinguishable, except the last name may appear as "Earl."

Then it gives the description of the applicant as he has read.

Then it gives the "Affidavit of identifying wit-

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765 ness," then the name "George Lagree," 24 West 133rd Street, New York City.

Then a picture, and then a seal.

• • • •

Cross-Examination

By Mr. Kelley:

Q. Mr. Hewitt, I believe you testified that the writing appearing on this exhibit in these words: "Traveling with orchestra; England, France," were not in your handwriting; is that right? A. Yes, sir.

Q. Do you know who did fill that in? A. I believe it was this lawyer of the Communist Party who accompanied me.

Q. How long had you known that lawyer of the Communist Party before you signed these things in his presence? A. Well, he seemed to come from nowhere, and the nature of the Communist Party, who invited

766 me up——

Mr. Ford (interposing). I object to this as not being responsive.

The Court. That is not responsive, Mr. Witness. You say he came from nowhere?

The Witness. Yes, sir.

The Court. Do you mean by that that you just saw him briefly?

The Witness. Yes, sir. I was called up into this national office of the bureau, and he was sitting there, and he was assigned to me to go and gather material on this forthcoming trip.

By Mr. Kelley:

Q. What is the name of the subscribing witness to that passport application? A. I think one is Mr. Lagree, and one is Mr. Plumber.

Q. Now, this exhibit reads in part:

"Affidavit of identifying witness.

"I, the undersigned, solemnly swear that I am a citizen

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of the United States; that I reside at the address written below my signature hereto affixed; that I know the applicant who executed the affidavit hereinbefore set forth to be a citizen of the United States; that the statements made in the applicant's affidavit are true to the best of my knowledge and belief; further, I solemnly swear that I have known the applicant personally for 9 years."

767 Had you known George Lagree personally for nine years. A. Not personally, but I knew of Lagree in the Harlem section of the Communist Party.

Q. How many times had you seen and talked with Lagree previous to the time he signed your application, as approximately as you can tell us? A. Well, on numerous occasions.

Q. Where? A. At the Harlem section of the Communist Party.

Q. The name of the other subscribing witness? A. A Mr. Plumber.

Q. How long had you known him? A. I knew him as a result of his activities in the Plumbers' Union.

The Court. How long?

The Witness. Oh, for a period of about three or four years.

By Mr. Kelley:

Q. Under what circumstances had yon known him?

Mr. Ford. I object as being immaterial.

The Court. How did you meet him, sir?

The Witness. As a result of my communist activity in the Plumbers' Union.

768 By Mr. Kelley:

Q. Why did you sign a false name to that document? A. As I——

Mr. Ford. I object.

The Court. I will sustain the objection.

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795 *Edward S. Greenbaum*

was called as a witness for and on behalf of the defendant and, having been first duly sworn, was examined and testified as follows:

Direct Examination

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Q. And during the war you were connected with the Office of the Under Secretary of War? A. I was.

796 Q. And what was your rank? A. Brigadier General.

Q. General Greenbaum, I will ask you whether or not you know Carl Marzani. A. I do.

Q. Would you kindly pick him out in this courtroom, if you will? A. Sitting over there (indicating).

Mr. Ford. May the record show he pointed to the defendant, your Honor?

The Court. Yes, sir.

By Mr. Ford:

Q. How long have you known him? A. Since 1943.

Q. Did you know him all during the year 1943? A. Well, the latter part of the year I got to know him.

Q. And 1944? A. Yes, sir.

Q. And since that time; correct? A. Well, I have known him since. I have not seen much of him since.

Q. Was that in the City of Washington in 1943? A. Yes.

797 Q. And did you know other people in the community who knew Mr. Marzani? A. I did.

Q. And amongst those people, what was Mr. Marzani's reputation for truth and veracity?

Mr. Kelley. Just a moment. If the Court please, before the witness answers the question, may I be permitted to determine the extent of his knowledge of the other persons who knew him?

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Mr. Ford. I object to that preliminary question.

The Court. I think it is fair to ask a preliminary question, sir.

Mr. Ford. May I have an exception to your Honor's ruling?

The Court. Yes, sir.

By Mr. Kelley:

Q. Did you work in the same office, General, with the defendant? A. I did not; no.

Q. When you said you had an acquaintance with persons who were acquainted with him, did you refer to his residential community? A. Well, included in the people that I knew who knew—

Q. No. Did you include there an acquaintance on your part with persons who reside in his residential community?

798 Mr. Ford. Wait a minute. I object to him stopping the witness while the witness started to give an answer, in propounding the second question.

He should be permitted to answer first.

The Court. No, sir. Let him answer this question. We will come back, if he wants to explain it.

It will take too much time, Mr. Ford.

By Mr. Kelley:

Q. Did you understand my question, General, as to residence? A. I think so; yes.

Q. As to residence, it is? A. Yes. Included in the people who I knew and who knew him were those who lived in his residential community.

Q. Did you refer to them exclusively or only in part? A. Well, I am referring to them and others.

Q. How many people did you have a common acquaintance with, people living in his social community? A. Social community?

Q. Yes. In his residential community.

Mr. Ford. I object to that word "social."

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The Court. I agree with you, sir. His residential section, where he lived, his home.

By Mr. Kelley:

Q. Where he lived, then. A. Three or four
799 that I know of by name.

Q. Where do they live with respect to him? A. Beg pardon?

Q. Where do they live with respect to his house? A. In terms of distance away, you mean?

Q. In any way you wish to answer. A. In the same general community that he lived, yes.

Q. What do you mean by the general community, now? A. Out around Arlington and Alexandria.

Q. State in a space of miles of how much from his home. A. I just could not say.

Q. They would not be neighbors in the sense of close proximity, as we usually term it? A. I think they were generally neighbors; yes.

Q. Well, let us take them. You say there are three? A. Well, three that I have in mind definitely who knew him quite well and whom I knew well, yes.

Q. The first one of those three, how far did that person live from Mr. Marzani? A. I cannot say, in connection—all I knew of Mr. Marzani's residence was generally in the Arlington section, out that way.

Q. And you haven't any idea how far this first person you have in mind lived from Mr. Marzani? A. Well,
800 I have an idea, yes, probably a couple——

Q. About how far is it? A. I would guess a couple of miles, probably.

Q. How about the second person? The same? A. The three that I have in mind were within that area. There are four. I think of another while you are talking.

Q. Now, as to persons, common acquaintances, yours and Mr. Marzani's—other than those who lived in the vicinity of his residence——

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Q. As to those persons, did they work in your office or his office? By "his" I mean Mr. Marzani's.

801 A. Three of them in my office and one of them in his.

Q. You are acquainted with only one person who worked in Mr. Marzani's office from whom you conclude you are in a position to testify concerning his reputation there? A. Well, you say only one person. One person who I know of as having lived in his immediate vicinity. I knew others who worked with him also.

Q. But do you have any occasion concerning those others, their views, to know their views concerning Mr. Marzani or his reputation? A. Yes.

• • • •

Q. Have you ever heard Mr. Marzani discussed by any of the persons you have in mind as fortifying your idea concerning his reputation?

• • • •

The Witness. You mean recently or at the time I

802 am referring to as having worked with him?

By Mr. Kelley:

Q. At the time you are referring to when you knew him and he was working there. A. Well, I didn't discuss reputations as such. Spoke about the man the same as you or I would about some common acquaintance or friend.

Q. You didn't discuss anything that would bear on his reputation? A. Yes, I guess it would bear on a reputation as far as your knowledge of what the man does and his ability and his general character, and so forth. I did, yes.

Q. You did? A. Yes.

Q. You did discuss his general character with these people? A. General character?

Q. That is correct. A. I wouldn't say specifically I discussed his character, no, about how he was regarded in general, speaking about him then.

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Q. The basis of your discussion was his efficiency and skill? A. Partly that, yes, but not entirely.

Q. Would you say you specifically discussed anything pertaining to his character? A. Well, character is a broad word. I would say yes, all the different things that went to make up a man.

803

Q. From what standpoint? Veracity, did you? A. Well, I never heard it questioned in any way.

• • • •

By Mr. Ford:

Q. Was his loyalty ever questioned? A. It never was, as I ever heard; no.

• • • •

Q. Now, General, among those people, what was Mr. Marzani's reputation for truth and veracity? A. I never heard it questioned.

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Q. What was his reputation for peace and good order and being a law-abiding citizen? A. I never heard that questioned either.

Q. And what was his reputation for loyalty? A. I never heard that questioned.

• • • •

Mr. Ford. Call Mr. Despres.

First, I would like to approach the bench for a minute, your Honor.

(Counsel for both sides approached the bench and conferred with the Court, in a low tone of voice, as follows:)

Mr. Ford. I would now like to present General Greenbaum for the purpose of his testifying as to the nature of the work, the activities and associations that he had with Marzani, Marzani with him, what Marzani did, the nature of the work, and also intend to establish that he worked for 14 and 18 hours a day in connection with this community aspect that was asked about.

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The Court. I will deny that, sir.

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Mr. Ford. May I have an exception?

The Court. Yes.

Mr. Ford. And that having it, it would all have been favorable. That is the proffer.

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Emile Despres

was called as a witness for and on behalf of the defendant

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Direct Examination

By Mr. Ford:

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Q. I wonder if you would tell me your present occupation. A. I am a professor.

Q. Where? A. Williams College, Williamstown, Massachusetts.

Q. Do you know Carl Marzani? A. I do.

806 Q. Would you pick him out? A. He is there, in the tan suit (indicating).

Mr. Ford. May the record show he picked out the defendant?

The Court. Yes.

By Mr. Ford:

Q. How long have you known him? A. Since early in 1942.

Q. And where was it in 1942 that you knew him? A. At the Office of the Coordinator of Information, as the agency was then called.

Q. Were you employed in that office also? A. I was.

Q. And did you know him in '43? A. I did.

Q. Where? A. At the Office of Strategic Services, which was the new name of the same agency.

Q. And in 1944? A. The same.

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Q. During those years that you knew Mr. Marzani, did you know other people in the community who knew him? A. I did. I knew a number of others.

Q. And amongst those people, what was his reputaion for truth and veracity? A. I would say excellently

807 high.

Q. And what was his reputation amongst those people for peace and good order and being a law-abiding citizen? A. Also admirably high.

Q. And what was his reputation amongst those people for loyalty and integrity? A. The same, admirably high.

• • • •

Cross-Examination

By Mr. Kelley:

Q. What was your last answer? A. Admirably high.

Q. For what? A. For loyalty and integrity.

Q. Would your answer be the same if you knew that he had been a member of the Communist Party? A. I'd find it extremely hard to believe unless there was some evidence for it.

Q. Please listen to my question and answer it.

• • • •

808 A. My answer would not be the same if I knew that.

Q. When did you first meet him, what day or month, if you can fix it? A. It was early in 1942, in the late winter or the early spring.

Q. What were the circumstances of your introduction?

• • • •

809 Q. Put it this way: Was it before he was actually hired by the Government? A. It was before he was hired. He was brought to me by another member of the organization. Mr. Marzani was seeking employment.

Q. Who was that member—the other member? A.

Mr. H. C. Barton, Junior, who worked under me at that time.

Q. And it was contemplated that if he came with the Government you would be his superior and so would Mr. Barton; am I correct?

• • • •

A. That is correct, yes.

Q. Have you ever made the statement before Mr. Marzani was accepted for employment by the Government that you, Mr. Despres, become aware that there existed allegations that he was a Communist and that before you hired him you convinced yourself for your peace of mind that his views were not those of a Communist?

Did you ever make that statement?

• • • •

810 The Witness. I—I—I am not certain. I may well have.

By Mr. Kelley:

Q. Now, I want you to tell us what information first came to you upon which you made the statement or may well have made the statement that before you hired him you were aware of allegations that he was a Communist. A. (After hesitation) I can't answer that question with certainty, but I, I believe that such allegations were reported to me by others at OSS who had known Marzani earlier.

.Q And after such information had been reported to you and before he was hired, you invited him to your home for dinner, didn't you? A. I don't recall.

Q. Are you prepared to testify that you never made the statement that you invited him to your home for dinner before he was hired? A. I am not prepared so to testify. I don't recall whether I invited him to dinner—or not (witness smiling).

Q. You have no recollection of having invited him to your home for dinner at any time? A. I don't have any such recollection now.

811 Q. But you may have so stated and it may have occurred; is that right? A. That is correct.

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Redirect Examination

By Mr. Ford:

Q. And would you believe there was anything wrong in your inviting Mr. Marzani to your house for dinner on that occasion?

The Court. The Court would not, sir.

• • • •

The Witness. No, is my answer.

By Mr. Ford:

Q. Now, you were asked by Mr. Kelley to give the circumstances under which you met Mr. Marzani. Now, would you kindly give us all of the circumstances at any time that you met Mr. Marzani, either in '43 or '44, and the places where you met him and how frequently you saw him and met him. A. I met Mr. Marzani the first time when Mr. Barton introduced him to me when we were considering

812 Mr. Marzani for employment, and I, I interviewed Mr. Marzani at that time and had, I think, two or three subsequent talks with him before he was employed.

Thereafter I saw him in connection with office work on a great number of occasions, in 1942 and 1943 and 1944. For approximately one year, I would say, of that period—that is a rough estimate—he was under my supervision but thereafter he was attached to a function which, though no longer under my supervision, was closely allied to my own work.

So I had extensive opportunity to know of his work and to see him at work.

In addition, we have seen each other socially perhaps half a dozen times a year during that period.

Q. And during that time you would see him, about how many hours a day would he work?

Mr. Kelley. Just a moment. Objected to as being beyond the bounds of redirect examination.

The Court. I will sustain that objection.

Mr. Ford. The basis is that he opened the door, your Honor.

May I have an exception to your ruling?

The Court. Yes.

By Mr. Ford:

Q. I will ask you what was the nature of his work.

Mr. Kelley. Same objection.

813 The Court. I will sustain that objection.

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824 *Henry Brodie*

was called as a witness for and on behalf of the defendant

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Direct Examination

By Mr. Ford:

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Q. Where are you employed at the present time, Mr. Brodie? A. State Department.

Q. Directing your attention to the years 1940 and 1941, what were your occupations during those two years? A. I was teaching at New York University, Department of Economics.

Q. In addition to your teaching at New York University, were you also a student there in the graduate school?

A. That is right, yes.

825 Q. Do you know a Carl Marzani? A. Yes.

Q. Would you identify him, if he is in the courtroom, please? A. That is him over there (indicating).

Mr. Ford. May the record show he points to the defendant?

The Court. Yes.

By Mr. Ford:

Q. At the time you were instructing and going to graudate school during '40 and '41, do you know what Mr. Marzani was doing at that time? A. He was doing the same thing.

Q. Did that include going as a student also; correct? A. Yes.

Q. What would the hours of school be for you two? A. No regular hours. Classes in day, and sometimes at night.

Q. What days of the week, as to the day classes? A. They ran from Monday through Friday.

Q. Including Friday? A. Well, I am not sure about the Friday, about economics. Some classes did, but I am not sure about economics.

Q. As to the classes in the evening, what time
826 would they be held? A. From 6 to 10.

Q. How often would you see Mr. Marzani during those times?

The Court. Both '40 and '41, sir?

Mr. Ford. Yes. and by the way, my questions will be to the same years.

By Mr. Ford:

Q. (Continuing) In '40 and '41? A. I used to see him a couple of times a day.

Q. Now, how about in the evening? Did you see him in the evening also? A. Sometimes.

Q. Now, during those years, those times of the day, and those times at nighttime, did you ever see him attend any meetings of the Communist Party? A. Not in the University.

Q. Sir? A. They didn't have any meetings in the University. I only saw him at the University.

Q. My question is, did you aver see him attend any meetings of the Communist Party? A. No.

The Court. He said he only saw him at the University.

Mr. Ford. I understood what he said, your Honor.

827 By Mr. Ford:

Q. Did you ever see him with any Communist literature, books, or pamphlets, of any kind? A. No.

Q. Did he ever suggest to you or did he ever ask you to join the Communist Party?

Mr. Kelley. Just a moment. If the Court please, it is irrelevant and immaterial. If he brought in every man he knew and asked him the same question, what would it prove?

I object to it.

The Court. I assume he did not.

You may answer the question, sir.

Did he or didn't he?

The Witness. No, he never asked me.

By Mr. Ford:

Q. Did you ever hear him suggest or ask anyone else to join the Communist Party? A. No.

Mr. Kelley. Same objection.

The Court. I do not think it would be of any value to us.

Mr. Ford. Does your Honor rule it is not admissible?

The Court. Yes.

Mr. Ford. May I have an exception?

The Court. Yes.

828 By Mr. Ford:

Q. During those times—and I am still speaking about the same time, the years, the day and the night-time—did he ever ask you or anyone else in your presence to contribute to the Communist Party?

Mr. Kelley. Same objection.

The Court. I will let him answer it, sir.

The Witness. No.

The Court. I will let him answer the other question too.

By Mr. Ford:

Q. Did you ever know him under any other name except Carl Marzani? During those times? A. No.

Q. Did you ever hear anyone else during those times call him by any name other than Carl Marzani? A. No.

Q. Did you hear him advocate revolution? A. No.

Q. Did you ever hear him oppose military conscription? A. No.

Q. Did you ever hear him advocate infiltration in the armed services? A. No.

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831 *Cecilia Bowles*

was called as a witness for and on behalf of the defendant

Direct Examination

By Mr. Ford:

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Q. And where are you employed? A. State Department.

Q. And how long have you been employed in the State Department? A. Since October of 1945.

Q. Directing your attention, I will ask you whether or not you know a Carl Marzani. A. I do.

832 Q. I wonder if you would pick him out in the courtroom, if you will? A. Yes, sir. He is right over there (pointing).

Mr. Ford. May it show, the record, that she picks out the defendant?

The Court. Yes.

By Mr. Ford:

Q. Did you know at any time when you were in the State Department, Mr. Carl Marzani? A. Yes; as an employee.

Q. Did he work in the same office you worked in? A. Yes.

Q. Who else worked there? Was there a Mr. Barton there too? A. That is right.

Q. What was the position you had there when Mr. Marzani and Mr. Barton worked there? A. Clerk-stenographer.

Q. During the time that you knew Mr. Marzani in the State Department, did you know other people in the community who knew Mr. Marzani? A. Yes, I did.

Q. Amongst those people what was Mr. Marzani's reputation for truth and veracity? A. It was fine.

833 Q. And what was his reputation amongst those people for peace and good order and being a law-biding citizen? A. It was fine.

Q. What was his reputation amongst those people for loyalty and integrity? A. It was fine.

* * * *

834 *Robert Daniel Francis*

was called as a witness for and on behalf of the defendant.

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Direct Examination

By Mr. Ford:

* * * *

835 Q. Mr. Francis, where are you employed now? A. In the Department of State.

Q. Do you know a Carl Marzani? A. I do.

Q. I wonder if you would pick him out in the court-

room, please. A. That is Mr. Marzani seated over there (indicating).

Mr. Ford. May the record show that the defendant was chosen?

The Court. Yes.

By Mr. Ford:

Q. When was the first time you met Mr. Marzani? A. October, 1942.

Q. And where? A. Office of Strategic Services.

Q. How long did you know him from that time on in the Office of Strategic Services?

Let me withdraw that.

What other places, other than Washington, D. C., did you know him? A. We were overseas together for a period of time in the armed forces.

Is that what you mean?

Q. That is the place. Whereabouts were you? A. London and some points in Italy. Rome, Caserta.

836 Q. When you were living in Italy, is it a fact that Mr. Marzani lived in the same tent with you? A. That is right.

Q. And that was when you were in the armed services; correct? A. That is right.

Q. Now, when you were in Europe, and particularly in Italy, and knew Mr. Marzani, what time was that? Can you locate that time? A. Between the dates April 23, 1945, and June 22, 1945.

Q. And during that time when he lived there, did you know other people in the community who knew him? A. I beg your pardon. Do you mean——

Q. Did you know other people in the community in Italy, when you were living in Italy—did you know other people in Italy who knew him at the time? A. Why, yes.

Q. And amongst those people what was Mr. Marzani's reputation for truth and veracity? A. Well, I have no indication that there was anything against that. I mean that is the best way I can answer it.

Q. And what was his reputation for peace and good order and being a law-abiding citizen? A. Again, there was everything in his favor in that respect.

837 Q. And what was his reputation for loyalty and integrity? A. The same applies to that.

Q. Now, coming to the time when you knew him in Washington in the Office of Strategic Services, and then did you know him after the Office of Strategic Services became part of the State Department also? A. Yes.

Q. Now, during both of those times, did you know other people in the community here in this country that knew Mr. Marzani? A. I did.

Q. And amongst those people, what was his reputation for truth and veracity? A. I should say it was the same; that it was good.

And what was his reputation amongst those people for peace and good order, and as a law-abiding citizen? A. I have no indication that it was anything but good.

Q. What was his reputation for loyalty? A. The same applies.

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839 *James Stephen Wright*

was called as a witness for and on behalf of the defendant.

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Direct Examination

By Mr. Ford:

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Q. You are employed in the State Department now? A. Yes.

Q. Do you know a Carl Marzani? A. Yes, I do.

Q. Could you pick him out? A. Yes, I can.

Q. Would you? A. Yes. There he is (indicating).

Mr. Ford. May the record show he picked out the defendant, Carl Marzani?

The Court. Yes.

By Mr. Ford:

Q. Now, how long have you known him? A.
840 Since 1945.

Q. And at what place did you know him then? A. OSS, Washington.

Q. And then subsequent to the time at the OSS, did you know him in the State Department also, when the OSS went to the State Department? A. Yes, I did.

Q. Now, do you know other people in the community that knew him during that time? A. Yes, I do.

Q. And amongst those people what was Mr. Marzani's reputation for truth and veracity? A. He was very truthful.

Q. What was his reputation amongst those people for peace and good order and being a law-abiding citizen? A. Very loyal.

Q. And what was his reputation amongst those people for loyalty and integrity? A. He was very loyal.

Q. What is the nature of the work you do at the State Department? A. Photography.

Q. And is that in the photographic branch of the State Department? A. State Department.

841 Q. And does that cover all types of photographic work? A. Yes, it does.

• • • •

893 *Carl Aldo Marzani,*

the defendant, was called as a witness in his own behalf

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Direct Examination

By Mr. Ford:

Q. State your full name, sir. A. Carl Aldo Marzani.

Q. What is your address, Mr. Marzani? A. 508 North Fillmore Street, Arlington, Virginia.

Q. And you live there at the present time? A. Yes, sir.

Q. With whom? A. I live there with my wife, my child of three, and my mother.

894 Q. Where were you born? A. I was born in Rome, Italy.

Q. Do you recall the year? A. Yes, sir, 1912.

Q. Did there come a time when you left Italy? A. Yes, sir.

Q. If so, when? A. It was in the late summer of 1924.

Q. And did you come to America at that time? A. Yes, sir. Arrived here Labor Day, 1924.

Q. What schooling did you have in Italy during the years you lived there? A. Well, I started off with kindergarden, primary schools, and secondary schools. I might explain that secondary schools are a little more pushed together than they are here in America, so that you only have five years of primary and three years of secondary schools, making a total of eight rather than twelve.

Q. When you came to America, did you come with your parents? A. I came with my mother and my sister.

Q. And was your father living at that time? A. Yes, sir.

Q. And where was your father at that time? A. My father was living in a small town by the name of

895 Peckville, which is in Pennsylvania.

Q. When had your father come to America in relation to when you came? A. He had come many months before, about eleven, I think, eleven months previously.

Q. What were the circumstances under which your father came to America? A. My father was in the Govern-

ment service in Italy, and in 1922 Mussolini came to power with a great deal of violence and bloodshed which my father didn't like, and in the process——

Mr. Kelley (interposing). If the Court please, I object to what his father liked or didn't like. It has not anything to do with what this man did.

The Court. I will sustain your objection.

Mr. Ford. I expect to show that that had a certain effect on this gentleman, and will connect it up with certain activities here in America.

The Court. I will not hear that testimony, sir.

Mr. Ford. May I have an exception?

The Court. Yes, sir.

By Mr. Ford:

Q. Then, when you went to Peckville, did you take up your residence with your father and the rest of your family? A. Yes, sir, I did.

896 Q. And then how long did you live in Peckville? A. A couple of years.

Q. And during those years, what were your activities in that city? A. Well, I was very busy learning English, for one thing, and I went to school. I started school in the first grade.

Q. That would be grammar school, would it, or primary school? A. Yes, primary school, first grade. And, as I say, to learn English, and I moved up. I did first and second and third grade in one year, and fourth and fifth and part of sixth grade the next year, and that kept me pretty busy.

Q. Then you graduated from primary school in Peckville, Pennsylvania, is that correct? A. That is correct.

Q. And while you were going to primary school, did you engage—and if you did, tell us what type of activity—in work? A. Well, I would help my mother around the house. We had a pretty tough time. My mother was sewing dresses. I tried to learn baseball. I didn't do too well, but that is, you know, just a kid growing up.

Q. Then did there come a time when you went to Scranton High School? A. I went to Junior High
897 School, sir, in North Scranton.

Q. Then after that, did you go to high school in Scranton? A. Yes, sir, I did.

Q. Did you graduate from the Scranton High School? A. Yes, I did.

Q. While you were going to Scranton High School, what activities or work did you engage in? A. I was working after hours from 4 o'clock in the afternoon until 12 o'clock at night in a gasoline station, in a greasing station, and some nights, once a week, I would work the whole night through, and then I would be doing my home work and going to school.

Q. Then did there come a time when you graduated from Scranton High School, and I wonder if you would locate the year. A. Yes. I graduated from Scranton High School in 1931.

Q. Upon your graduation from high school in 1931, what did you do then? Did you go to school immediately or did you go to work? A. No, sir. Well, I had had sort of my share of work, I felt, and I have always wanted to see America, because I had never moved from Pennsylvania, so I took the opportunity of that summer to hitch-hike all over the United States. I went 9,000 miles from
898 coast to coast, and from the Rockies to Texas, all up and down the United States, working my way around. I spent a dollar and a half for that whole summer.

Q. Then, after your graduation from Scranton High, did you move to any other city? A. Yes, I moved to Williamstown, Massachusetts, where I went to college.

Q. And was it on a scholarship that you had been awarded in Scranton High School that you went to Williams? A. The award of the scholarship was made by Williams College.

Q. Yes, and did you earn that award and get it? A. Yes, sir, scholastic award.

Q. And then did you go to Williams College in Massachusetts? A. I went to Williams for four years, from 1931 until 1935.

Q. And during that time, while you were at Williams, what did you study or what was the course of study at Williams College in Massachusetts? A. My major was literature, American literature, and my minor, or subsidiary course, was science. I studied physics, quantum theory, anatomic, Einsteinian theory, and so on, I was very interested in science.

Q. Then when was it that you graduated from
899 Williams? A. In 1935.

Q. And while you were at Williams were there any other activities that you engaged in there other than the study of these subjects you have enumerated? A. Yes, sir. For the first three years I worked, waited on tables, and did odd jobs like collecting laundry for the students and things like that, to earn my way through while I was going. In the fourth year, I was elected president of a large club, eating club.

Q. What was the name of that? A. Which was called the Garfield Club, which carried with the presidency—that is the place I had been waiting on table, incidentally—which carried with it the responsibility of administering a rather large budget, $10,000 or so, a month, and in exchange I was paid my food for doing that..

Besides working and studying, I did some smaller activities. I was editor of the literary magazine for three years; I directed a couple of small plays; I was one of the executives—one of the four members of the executive members of the campus, had to pay some attention to student government. I was also a member of Phi Beta Kappa during my junior year and my senior year, and I was a member of the society called the Gargoyle Society, which consisted of 10 members of the university, of the college, chosen every year on the basis of their contribution to the school.

900 Q. What was the nature of that society? What was that society's activities? A. The society's activities was the promotion of the welfare of Williams College, the maintenance of students' standards, the maintenance of conduct—well, Williams, you know, has a good reputation, and it was the business of Gargoyle to see that it maintained that reputation.

Q. Then, when you graduated from Williams College, what did you do then? Did you go to school immediately or did you engage in some work? A. No, sir. I went to New York and went to work.

Q. What year was that? A. This was 1936.

Q. When you went to New York for work, did you go by yourself? A. Yes, sir.

Q. And where did you go to live when you arrived in New York in that year? A. I lived on, I believe, 22nd Street.

Q. Is there any other designation for that particular area where you went to live? A. Oh, yes, sir; that is a pretty tough section. It is sometimes known as "Hell's Kitchen."

Q. Is that on the West or the East Side of New York? A. It is on the West Side, extreme West Side, towards the river.

901 And when you went there, did you take up residence by yourself? A. I did for a few weeks, and then one of my roommates—I had a couple in college—came down and lived with me for a while.

Q. And then at that time where did you go to work in New York? A. I worked with a publishing firm for several months in a specific assignment.

Q. What is the name of the publishing firm? A. Simon and Schuster.

Q. How long did you stay in their employment? A. As I say, it was a specific job they hired me to do, and it lasted about, I think, three or four months.

Q. What was that job that you did for that publishing concern? A. It was to go through a big back-log they had established of manuscripts and novels in foreign languages and in English, that is, the British editions thereof, that is, French, Italian, Spanish, and publishing firms receive this stuff and somebody has got to go through it.

Q. What other activities or business at that time did you engage in in New York, or do? A. I did try to write a little bit. I am not too successful.

902 Q. About what subjects, or what was the writing about? A. Well, I wrote a play about mining towns, coal mining towns, based on my experience——

Q. By the way, I will ask you, is Peckville or Scranton a coal mining town? A. Peckville is, and Scranton—it is one of the largest areas in the United States——

Q. In addition to writing about miners, what other writings or anything did you engage in at that time in New York? A. That is all, sir.

Q. And how long did you stay in New York on that occasion? A. I left New York in either August or September.

Q. Of what year? A. Of 1936.

Q. And what was the occasion of your leaving? A. I had received a fellowship to Oxford University.

Q. From where? A. From Williams College. It is a fellowship known as the Moody Fellowship, established to be given once every three years at the discretion of the President and the faculty to one of the members of the college, whom, in their opinion, would benefit by it.

903 Q. And did you accept that fellowship? A. Yes, I did.

Q. And where did you go then from New York after you accepted that fellowship? A. I went to London.

Q. And did you go by yourself? A. Yes.

Q. Or with anyone else? A. I was alone.

Q. Did you at that time apply for a passport to the State Department? A. Yes, I did.

Q. And what name did you apply for that passport in? A. The only name I ever used—Carl Aldo Marzani.

Q. Then when you went to London, did you report in Oxford? A. Yes, I did.

Q. And what were the subjects you took up or studied at Oxford in London? A. The subjects I took up were a combination, which is sort of a specialty of Oxford. It is what Oxford is very famous for, and they have a thing called Modern Grace. It is a title they have, and it comprises three related subjects, philosophy, history, and economics.

904 Q. And how long did you study at Oxford, those subjects? A. Two years.

Q. And what activities did you engage in while you were at Oxford? A. Well, for one thing, I got married.

Q. How long had you been at Oxford when you got married? A. Several months.

Q. And as to your marriage, your wife came from the United States and met you over there? A. Yes, she came from the United States. We met here and I wrote her and said "Let's do it, and she said "O. K."

Q. After you wrote her "Let's get married," did she come to London? A. She came to Southampton. I met her there.

Q. And you were subsequently married? A. Yes, we were married in the Oxford Registry.

Q. And that is at the University? A. Yes.

Q. Now, what is your wife's name? A. Edith.

Q. What was her maiden name? A. Eisner.

905 Q. And what activities did you engage in while you were at Oxford? A. I went to Spain for a couple of months.

* * * *

Q. Tell us when you went there where you went and what you did, your activities? A. Well, I went because I had heard that Mussolini was sending Italians down there

to fight against the Spanish people, and I wanted to see what was going on.

A. And did you go down there? A. I went alone, using my own money, my own passport, my own name. I arrived in Barcelona, stayed there a couple of days trying to get visas from the Spanish Government—who were very hard about it—to go to the front lines.

I finally succeeded in getting a permit to go about a hundred miles ahead, and in the process of going there, I got picked up one day by a truck in a little village. I might mention, for example, that I had stopped in this village because it had a large textile plant. I wanted to see what was going on. I found the Spanish people
906 working and running their machines, and a man was coming through from Barcelona—troops were going to the front all the time—and a man picked me up, who was an anarchist, and we got very friendly, and I spoke Spanish; I had been in Mexico previously, and I had studied Spanish at school, and he said, "Come on up to my headquarters."

I think he was kind of pleased to have an American captured. So I said, "Surely." And he went to his headquarters, which was the headquarters of the largest anarchist column in all of Spain. It was called the Derucci Column, and it had about 6,000 members. This was the headquarters, and I was the only American there, and, as far as I know, the only person that they had who was not a Spaniard, at any time. And I spent a good deal of time with them, discussing and talking with them——

Mr. Kelley (interposing). Just a moment, if the Court please, I do not like to unduly limit this——

By Mr. Ford:

Q. What about——

Mr. Kelley (interposing). Permit me to finish.

I do not wish to unduly limit the proper accounting of this man's background, but I do feel we have gone afield.

The Court. I agree with you sir.

Mr. Ford. I had attempted to stop at that time.

907 The Court. I will state to you, Mr. Ford, that we are interested in the issues of this case, and not the Franco War in Spain, sir.

Mr. Ford. That is what I think we are covering now, your Honor. That is why I am offering it.

The Court. Well, sir, I will not continue in this line.

Mr. Ford. I had told him I would stop.

By Mr. Ford:

Q. Now, just tell me the length of time you spent there. A. About two months.

Q. At the end of that time, did you return to Oxford? A. Yes, I did.

Q. And what were your activities at Oxford? A. I was one of the directors of the Oxford Little Theater Society and directed several plays.

I did a bit of writing for the local magazine. I also began to earn a little money in American magazines by writing, and English magazines.

Q. Did there come a time when you left Oxford, and if so, when was it, and where did you go or what did you do? What were your activities? A. About 1938, I guess it would be, in the spring of 1938, having graduated from Oxford and obtained a degree with honors, my wife and I decided to come back to America. That is where we

908 belonged.

We had saved $500 out of this writing I had mentioned, and my wife said, and I said, "We would never have another chance; let's go around the world." And we did.

Q. Did you then leave and go to any countries in Europe, and if you did, name the countries. A. Yes, sir. We left England, hitch-hiked to the coast, took a boat to Denmark, the west coast of Denmark. We hitch-hiked all over——

The Court. Mr. Ford, we don't want to know all of the methods of transportation.

By Mr. Ford:

Q. Did you go to Denmark? A. Denmark, Norway, Sweden, Holland, Belgium, Germany, Hungary, Roumania, Turkey, Syria, Irac——

Q. Did you go to Japan? A. Yes. I went to India——

Q. Did you go to China? A. Yes, sir.

Q. Did you go to Russia? A. No, sir.

Q. Have you ever been to Russia? A. No, sir.

Q. Now, after you had made this trip with your wife, and when that was finished, did you come back home? A. Yes, sir.

909 Q. And what time was it, and where did you land? A. We landed in San Francisco. It must have been May or June, 1939, and we, without money, came across the country and came to the East Coast here.

Q. And when you came to the East Coast from 'Frisco, where did you then take up your residence? A. We lived for a couple of months with my wife's parents—several months—and then came to New York City, which was my legal residence.

Q. And where did you go in New York City? Did you and your wife take up residence in New York City? A. We took up residence on the East Side.

Q. And at what address? A. 643, I believe, East 6th Street.

Q. And would you locate the time when you took that residence up and returned to New York? A. Yes. It was in the fall of '39.

Q. And did you get employment then, or what did you do after you had established your residence down on the East Side? A. I tried to get work. It was very hard. I did, and my wife did. We had left maybe $50 or $60, and used all that up. There was no soap—no jobs. And finally we applied for relief.

I was on relief for a matter of two or three weeks, and from there went on to WPA.

910 Q. And what kind of work did you do under WPA? A. I did economic research on WPA.

Q. And that was a Government organization, that WPA was it? A. Yes, sir.

Q. Then, what else did you do? Did there come a time in New York when you went to school? A. Yes, from that WPA job I finally succeeded in obtaining a position as senior assistant in economics at New York University, which carried with it certain duties and certain privileges.

Q. What were the duties? A. The duties were that I had a certain amount of teaching assigned to me—that is, regular teaching schedule—I had to be at the disposal of the professor, the four professors, for handling of their reports, correcting papers, and so on. I had to be on call, to be available in case one of the professors, for any reason, could not take his class. Then it was my duty to conduct that class.

I also had to do such things as proctoring and whatever administrative work was suggested; correcting papers, examination papers, drawing up examination lists, et cetera.

Q. And how long did you hold that job and do that work at New York University, and what years did it cover?

A. In 1940 I was senior assistant. The next year
911 I was promoted to instructor.

Q. You mean the next year, '41? A. '41.

Q. And were you there during those years, attending there? A. Yes, I was.

Q. Now, in addition to being an instructor, did you, during those years, enroll in New York University as a graduate student? A. Yes, sir. Part of the privileges of the position was the privilege of enrolling as a graduate student in seminars, looking towards the completion of higher degrees.

Q. Now, during those two years, what days of the week would you attend New York University as an instructor, teacher? A. Well, every day, Monday to Friday.

Q. And aprpoximately what hours of the day did they cover? A. Well, I can't tell you exactly, because we had special teaching schedules—specific teaching schedules—

let us suppose that on Monday I had a class to teach from say 9 to 10 or 10 to 11. I would be there, and then be, for several hours during the day, usually the whole day, until 4 or 5 o'clock, or so.

912 Q. And what were the hours that you would attend New York University during those two years when you were doing student work and studying as a student? A. During the evening, mostly. I don't recall exactly every detail, but some classes went from 5 to 7 or 5 to 6:45. Some went from 6 to 7:45. Some went from 8 to 10. Also, some seminars carried the whole evening through. In other words, you would go to the house with the professor, where there would be a group of five or six students, and you would start at 6 o'clock. As a matter of fact, we usually had dinner together, and then go on to the professor's apartment and go on until all hours, 10, 11, 12.

Q. What were the subjects that you taught at New York University during those two years? A. I taught economics.

Q. What were the studies you studied as a student during those two years at New York U.? A. I studied economics.

Q. Then, were you, during those two years at New York U., living at the same address with your wife? A. Yes, I was.

Q. And then did there come a time when you left New York? A. Yes, sir; right after Pearl Harbor.

Q. In addition to your teaching at New York U., and studying during those two years, what other activ-

913 ities did you engage in in New York City during those two years? A. Well, I continued writing. I did quite a bit of writing.

Q. Well, tell us some of the things you wrote, what topics or subjects you wrote. A. Well, I wrote the story of my trip around the world. I wrote a play on Italians in Pennsylvania. I wrote several articles or anecdotes,

trying for the New Yorker, and magazines like that. I also did a tremendous amount of work on a novel which just was, you know, was very big, and I am still at it.

Q. Did you engage, during that time, in any civic work in New York City on the East Side? A. Yes, I did.

Q. What was it? A. The outstanding work that recalls most clearly to my memory was being the secretary of the East Side Conference to Defend America, which later became the East Side Defense Council, and which later became the Office of Civilian Defense, to which I was unanimously elected by the representatives of the com-
community of the East Side.

Q. When was it that you became active in that civic organization, approximately? A. It was in 1941,
914 summer or fall, somewhere in there.

Q. Under what circumstances did you become engaged in that civic activity? A. Well, to understand that, you have got to understand the East Side. It is one of the most densely populated areas in New York City, with probably—well, very few nationalities are missing from it, many races and many creeds, but two of the largest groups are the Jewish group and the Italian group, and, as you remember at that time, there was a good deal of tension in the air. There were many Americans who did not believe we should go to war, and there were other Americans who just as honestly believed that we should. And, unfortunately, that was reflected in some of these national groups. The Jewish people could not possibly forget what Hitler had done to the Jewish people. They honestly believed that Hitler was a traitor, a threat to America. The Italian people, right or otherwise, misguided some, perhaps, thought that America should not go and fight Mussolini. And the result was that a tremendous tension was building up, very serious. It cannot be overemphasized, the possibilities of riots, public disorders and a real mess.

And under those circumstances, a group of citizens were, with Meyer Goldberg as the chairman—

Q. Who was Meyer Goldberg at the time? A. I believe he was Councilman of the City of New York
915 and had just been Assemblyman of the State of New York. I am not quite sure. I know he was both at one time or another. He was one of the leading citizens, if not the leading citizen on the East Side.

Q. Then what was done? A. They asked me to become executive secretary, particularly because I was an Italian, spoke Italian, and I believed that Hitler was a menace to the United States. And it was a very large organization. It represented practically everyone on the East Side, and it conducted activities such as, for example, we had a parade of nationalities at which prominent speakers came. Newbold Morris, who was the head of the City Council of New York City. He was Mayor LaGuardia's deputy; a man who was the head of British-American relief, or British Relief Society—I forget the exact title—and several speakers of that caliber.

We also ran meetings. We set up stations in stores and settlement houses, of which there are many on the East Side, like Henry Street Settlement, for example, for the collection of funds, clothing, packages for the people who were fighting; the British people——

The Court. Do we have to go into all this detail, Mr. Ford?

Mr. Ford. Yes, your Honor, because I believe it relates to the activities in New York City in which he engaged, and the reason why I am asking about the nature
916 of activities is because I think they contradict the activities he is charged with conducting during that period of time at that place.

The Court. He is not stating to the specific charges at all here.

Mr. Ford. And I expect to connect it up with the Government's exhibits relating to that organization and so-

ciety, and the activities that those pamphlets state were conducted, your Honor.

The Court. Well, you are making a speech now, Mr. Ford.

Mr. Ford. Excuse me. Well, your Honor, that is my purpose.

The Court. I will say to you, sir, we are not going to have all the details of this organization.

By Mr. Ford:

Q. And how long did you act for that organization and that civic society in New York City? A. Until I was elected executive secretary of the Office of Civilian Defense on the East Side, which was in February of 1942.

Q. Then did there come a time when you came to Washington? A. Yes, sir.

Q. And I wonder if you would locate that time, if you will? Did you come from New York? A. It was
917 in late February, 1942.

Q. And was that to make application for a job in the Government? A. Yes, it was.

Q. And then, as a result of that, did you get a position in the Government? A. Yes, I did.

Q. And what date was it that the Government appointed you to that position? A. I am not positive. I think it was the 4th, 5th, 6th, somewhere in the early part of March, 1942.

Q. And what was the position you took? A. Senior Economic Editor.

Q. With what organization of the Government or what part of the Government? A. It was the Coordinator of Information, under Mr. William Donovan.

Q. How long did you stay in that job? A. I forget. It was several months, three or four months, and then I—still in the same place—I became—I think I started as a Junior Economic Editor and became a Senior Economic Editor. Then I was in that for several months, and then I was chief of my section, and then stayed in that for some

more time and became Deputy Chief of the branch
918 of the larger division.

Mr. Ford. Now, without traversing your Honor's direction, I am about to ask him—and don't answer this—what his work and his activities were in that time when he was in that office in the Government.

The Court. You mean his professional functions there, sir?

Mr. Ford. Yes, sir, the work he did and his activities.

The Court. All right.

By Mr. Ford:

Q. Now, when you were in that branch of the Government, Coordinator of Information, what was the nature of your work and duties? A. It was very varied.

The Court. Let me say this to you, Mr. Ford, so that you can talk to your witness.

We want everything that is material to this case, but we don't want all the details.

Mr. Ford. No, sir.

By Mr. Ford:

Q. In a general way, tell me then the nature of your duties when you were in that office of Coordinator of Information? A. Intelligence work, such as, for example, picking the targets for the Doolittle raid on Tokyo.

919 Q. Did you do that? A. Yes, I did.

Q. Generally, what was some of the other work in addition to intelligence work for the Government—what other type of work did you do? A. What are called capability studies, that is, an analysis of what Germany could do in Tunisia, for example; our troops were in Tunisia, and the Germans were putting troops on the other side, and one of the big basic problems is how much manpower can the Germans put on the front line in a given time.

Q. And did you work on those problems for your Government? A. Yes, I did.

Q. And then did there come a time when that organization changed either its title or the nature of its work—

the Coordinator of Information? Did that office take another name? A. Yes. It became the Office of Strategic Services.

Q. And did you go, then, and stay in the Office of Strategic Services? A. Yes, I did, in a new division which we had organized.

Q. And was that organized and headed by General Donovan? A. Yes, sir, it was.

920 Q. And how long did you say in that particular named branch—Office of Strategic Services? A. I was there until I was inducted into the Army in 1943, September, I believe, or late August.

Q. In general, what was the nature of your work while you were working in the Office of Strategic Services until the time you were inducted into the United States Army? A. Well, we were trying out a new technique of taking data which was important to the General Staff and presenting it in a very quickly assembled form, so you could see it—charts, movies, slides, exhibits.

Q. Would you give me the names of some of the Army officers and their titles, that you worked with during that period? A. Yes, sir. The first job I did was for General Marshall.

Mr. Kelley. I object. This is immaterial and irrelevant to the issues we are trying in this case.

The Court. I don't think it makes any difference.

Mr. Ford. May I have an exception, your Honor?

The Court. Yes, sir.

By Mr. Ford:

Q. Then when you come to the time when you were inducted into the Army, what occurred when you
921 were inducted? A. I was shipped out to a camp —Camp Lee.

Q. Down in Virginia? A. Yes, sir, and began to get my training, and then I was ordered back to the Office of Strategic Services.

Q. And you still remained in the Army, with the rank of private, at that time; is that correct? A. That is correct.

Q. Then, as soon as you were ordered back to take that job, you still remained in the Army as a private; right? A. That is correct.

Q. And what was the nature of the work you did then? A. Well, I went back as Deputy Chief for the division in civilian clothes.

Q. And how long did you continue working in that job as a private? A. I think it was about eight months, and then I got promoted to Master Sergeant.

Q. And then did you still stay here doing that work in Washington, D. C.? A. No. I went overseas.

Q. When? A. I think it was about December—November or December of 1944. I don't recall exactly.

Q. And were you still in the Army? A. Yes,
922 I was.

Q. And then did you do work in the Army overseas? A. Well, I was in the Army, assigned to the Office of Strategic Services.

The Court. Did you go for the Office of Strategic Services?

The Witness. I went for the Office of Strategic Services.

By Mr. Ford:

Q. How long were you over there in that work? A. I was in London for, I believe, four months, three or four months. I was in Germany, and I was in France for a period of weeks, and then I was ordered—I was requested, rather, I should say—by the Theater Commander of the Mediterranean Theater in Caserta to go to Italy, which I did. I arrived in Italy somewhere in the spring of '45, perhaps in February, I don't recall, but some time in the early time, and I was in Italy for several months until I finished the job.

Q. What was the nature of your work during that period that you have just enumerated? A. Redeploy-

ment of the American troops of the Japanese Theater, and the release of these troops to the Japanese Theater.

923 Then did there come a time when you came back to the United States? A. Yes, sir. I flew back in June, I believe, or July.

Q. You were still in the Army? A. Yes, I was.

Q. Master Sergeant? A. That is correct.

Q. And then when you came back, where did you come to? A. I came to Washington.

Q. And did you resume your work here in Washington for the Office of Strategic Services? A. Yes, I did.

Q. Then did there come a time when you received a discharge from the Army?- A. Yes, sir. I received an honorable discharge in September, 1945.

Q. And at the time you received that honorable discharge you were in the Office of Strategic Services? A. That is correct.

Q. Then did there come a time when the Office—— A. Excuse me, I am not quite sure, but at this time we were being transferred to the State Department, so it is my recollection that the papers were initiated while I was

924 still in the Office of Strategic Services, but actually the date I was out of the Army, we had become part of the State Department.

Q. The Office of Strategic Services, then, by Government order, became part of the State Department? A. That is correct.

Q. And you went right along with the Department? A. That is correct.

Q. Then you took up work in the State Department as a civilian employee; correct? A. That is correct.

Q. And in what branch did you take up that work? A. I was Deputy Chief of the Presentation Division.

Q. What was the nature of your work there? A. It was the preparation, again, of reports for high officials in the State Department in a form which was quicker and more concise and clearer, and so on.

Q. And then did there come a time when you ceased to be employed by the State Department? A. Yes, sir.

Q. When was that? A. I resigned on November 15, 1945. I am sorry, 1946.

Q. And was your resignation accepted on November 15, 1946? A. Yes, sir.

925 Q. And then where did you go to work on that day? A. In the city of Washington, in my own private outfit, making films for the labor movement.

Q. And are you still engaged in that business here in the District of Columbia? A. Yes, sir, I am.

Q. Did you know while you were in the State Department a man by the name of Panuch? A. Yes, sir; very well.

Q. What was your association with Mr. Panuch while you were in the State Department? A. It was a double one, sir. He was my superior in the channels; that is to say, he was, you know, third or fourth up. Also, we had quite a good personal relationship.

Q. Now, directing your attention to on or about June 1946, did you have an interview with Mr. Panuch? A. Yes, I did.

Q. I wish you would kindly tell us in substance what took place in that interview between Mr. Panuch and yourself; what he said or what you said, in substance, please. A. Well, I had been asked to resign from the State Department, and I went in to see Mr. Panuch about that request.

The Court. Excuse me; I didn't hear you, sir. Did you say you had been asked?

The Witness. I had been asked to resign; yes.

926 I went in to discuss with him what was the problem. It was a very lengthy conversation, over two hours, in which Mr. Panuch did a lot of the talking.

By Mr. Ford:

Q. I wish you would condense it, if you can, and give

to us in substance what that conversation was. A. Well, I remember walking in and saying, "Hello, Joe," and he said, "Hello," or something like that.

And I said, "Well, you know, I have come over to tell you that I have been asked to resign. You probably know that," and I said, "I just want to tell you that I have no intention of resigning. If I have done something wrong, fire me, but I have not."

I said, in substance, that my beliefs had always been very well known in the OSS, in the State Department. I never made any secret of my beliefs, and as to Fascists and pro-labor unions, and I had certain disagreements with the way the State Department was pursuing its foreign policy, and I mentioned them.

I said, "You know, Joe, I am not a member of the Communist Party."

I said that to him; he never asked me. "I am not a member of the Communist Party," I said, "nor am I a spy." "I don't sell secrets of my country. I don't even make leaks," I told him, and I told him specifically, "I don't even make leaks like certain State Department officials do to Drew Pearson, or like certain people in the Department of Justice, like Mr. Hoover, to Walter Winchell."

927

The Court. We are not concerned with that.

Mr. Ford: We can leave that out.

By Mr. Ford:

Q. That was part of the conversation, and the reason I asked it specifically, of course, your Honor asked me about my basis for questions when I was questioning Mr. Panuch.

I want to show I had a basis for it.

The Court. This witness not——

Mr. Ford (interposing). I am shutting him down right now.

The Court. Yes, sir; and I will ask you to keep that out from now on.

Mr. Ford. It is only that it was brought out in the conversation of Mr. Panuch, if your Honor will remember, when I stood up and read some questions, and your Honor asked me the basis of it.

That was all.

Mr. Kelley. Just a moment.

Mr. Ford. I am changing that subject right now.

Mr. Kelley. If your Honor please, I move that that matter be stricken and that the jury be instructed concerning it, that there is no basis for such a report.

928 Mr. Ford. I have no objection to that.

The Court. Such damage as any that follows from that.

It will be stricken.

By Mr. Ford:

Q. Then what other conversation did you have with Mr. Panuch about either Communism or your job? A. Well,——

Q. What did he say to you or you to him, in substance? A. Having said to him that I was not a member of the Communist Party and that I was not a man to treat confidential matter lightly, we went on to quite a lengthy discussion about American policies, American foreign policies, our relationship with Russia, which he participated in to a very large extent, and seemed to have some agreements with me, and seemed to have some disagreements.

We talked about that, as I say, for quite some time, and told him somewhere in the conversation—Oh, I told him that I had no particular desire to stay in the State Department, given this kind of a set-up, this kind of talk, but that on the other hand, I was not going to resign under fire.

My reputation was important to me, and that it was part of my future and my career and my well-being.

And somewhere along there he said to me, "Carl, what about this stuff about Tony Whales?" That is just the

way he put it. And I said, "Well, Joe, you know that; that has been done all over again."

929 I said, "It was all over in the Civil Service Hearing. I answered it. I was found suitable for Government. I sure thought that was dead and buried for once."

And I told him that I had a book which I had presented, of evidence, to the Civil Service Commission to get. I said, "I don't know if you have seen this, Joe, but here it is. Will you look at it?"

He said, "Sure." He also made certain statements about Mr. Russell, which I don't want to repeat.

Q. No, leave them out.

Just tell us now, you showed him some evidence that was adduced at the hearing of the Civil Service Commission? A. He also made some statements about his own ability as a lawyer in New York—which I don't want to repeat.

Q. Don't give us the details, just the reference to them. A. He also made a long dissertation, I would say, for half an hour perhaps, on theories he had about the world and world history. They were compounded of a man named——

Q. Just tell us, he did that as a fact? A. He did that.

Q. Now, I will ask you whether or not there came a time in August of 1946 when Mr. Panuch had an interview with you? A. Yes, there was. We saw each

930 other fairly often in the course of business.

Q. Now, at that particular interview of August, 1946, what, if anything, took place between you and Mr. Panuch, your superior at the State Department? A. Well, Mr. Panuch volunteered, without any request on my part, or any question, that he had gone over my record and he was satisfied. The specific words I remember him using were, "Don't worry, Carl, it is all O. K."

And I said, "Well, that is very nice. I appreciate it a lot," and I really meant it, you know, his looking into

things in my behalf. But I also said to him at that time, very specifically, "I will have to think it over and I will have to consider it."

And he leaned over, we were both sitting down, and put his hand on my knee, and said, "Carl, we want you here."

And I said, "Well, I like it too, but you know, this kind of thing happens again." And he said, "So long as Russell or I are here, it will not happen. You have nothing to worry about."

Q. Now, I will direct your attention to on or about the 15th of November, 1946. Did you have another conference or interview with Panuch, your superior? A. Yes, I did.

931 Q. What took place, then, in substance? A. I would like to say there are two sentences I remember with tremendous clarity that I can swear to. The rest I can tell you in substance.

Q. Did they take place at this interview? A. Yes, sir. It was the first sentence and the last sentence of that interview.

Q. What was it? A. The first sentence was, I came in and he was sitting at his desk with his back to the window, and I came in and sort of grinned——

The Court. We don't need all the details while he was sitting at the window.

By Mr. Ford:

Q. What did he say and what did you say? A. I said to him, "Joe, I have come to give you a surprise. I hope you don't like it." So he kind of looked at me and said, "What is it?"

I said, "I am going to resign." So he started laughing. He said, "Well, I think you are doing the wise thing. We will miss you, but things are tough. With a Republican Congress, it is going to get worse, and I think you are wise." And I said, "Well, Joe, I got a career to make. I am a young man. I have got to earn a living, and I figure

there is just no future for me in the State Department as things are."

932 He asked me what I was going to do. I told him what I was going to make. I told him I was going to make films for the labor movement. During that time also I told him I had made a film called "Deadline for Action." First, he made believe he hadn't heard it. Then when I said, "Look, quit kidding," he started laughing and said, "Why do you have to be so radical?", and I said, "Radical? Have you looked at the film?" And he said, "No," and he laughed again, and I said, "It is a big hit. Four million people are looking at it all over the country."

The Court. We are not concerned with that.

By Mr. Ford:

Q. After he had asked you to stop being—"Why are you so radical," then how did that conference end up or that conversation? A. It finally ended up by my saying to him, in substance, this still is, "Well, Joe, I want to know from you if you in your own mind it is all clear, because as I told you before, I am not resigning from the State Department under fire. But if it is clear, I would like to resign as of the close of business today." And he said to me, "O. K., sure." No remonstration; didn't say no.

The last sentence he said, which I definitely remember very clearly, he accompanied me to the door, held my hand, and not only shook it but held it, and walked me

933 up to the door and said, "Don't worry, Carl, you and I are boys in the big league."

• • • •

Q. I hand you what has been identified as Government's Exhibit 33-A-1, a leaflet headed, "Parade For Peace."

Now, I will ask you whether or not you ever had anything to do with that pamphlet. A. No, sir.

Q. When, to your knowledge, was the first time you ever saw that particular pamphlet? A. I just seen the orig-

inal now for the first time. I saw a photostat of this perhaps two or three days ago. I do not remember.

Q. Was that the first time you ever saw it, to your knowledge? A. That was the first time I ever saw this.

• • • •

934 Q. I hand you what has been marked for identification Government's Exhibit number 33-A-2, which appears to be an editorial out of a newspaper, and ask you whether or not you have anything to do with the preparation, the making, editing or publishing of that document. A. No, sir.

Q. When, to your knowledge, is the first time you ever saw that document? A. At this trial.

• • • •

Q. I will now hand you what has been marked for identification as Government s Exhibit 33-A-3, which purports to be a newspaper article, and ask you whether or not you ever had anything to do with the preparation, the making, the distribution or publishing of that document?

935 A. No, sir.

Q. When, to your knoweledge, is the first time you ever saw it? A. At this trial.

• • • •

Q. I will now hand you this leaflet which has been marked as Government's Exhibit number 33-N-1, and ask you whether or not you ever had anything to do with the preparation, the printing, the publishing or the distribution of that pamphlet. A. No, sir.

Q. When, to your knowledge, is the first time you saw that pamphlet? A. At this trial.

• • • •

Q. I now hand you Government's Exhibit for identification 33-N-2, and ask you whether or not you ever had

anything to do with the preparation, the publishing or the distribution of that pamphlet. A. No, sir.

936 Q. I will ask you, to your knowledge, when is the first time you have seen that pamphlet? A. At this trial.

• • • •

I will ask you to look at this pamphlet, which is Government's for identification 33-R-1, headed, "Free Earl Browder," and I will ask you whether or not you ever had anything to do with the preparation, the distribution, or the publishing of this article. A. No, sir.

Q. When, to your knowledge, is the first time you saw that? A. At this trial.

• • • •

Q. I will hand you what has been marked for identification for the Government as 33-T-1, which is a pamphlet of two pages, and ask you whether or not you ever had anything to do with the preparation, publishing, or dis-

937 tribution of that pamphlet. A. No, sir.

Q. When, to your knowledge, is the first time you saw that? A. Here in this courtroom.

• • • •

Q. I now hand you what has been identified as Government's Exhibit 33-X-1, "March Against Hitler," and I will ask whether or not you ever had anything to do with the composition, publishing or distribution of that pamphlet. A. Yes, sir.

Q. And tell us what you had to do with that pamphlet, if you please. A. I was responsible for its being drawn up. I checked it, contributed to the words, was responsible to seeing that it was printed, was responsible to see that it was distributed, and that is that.

Q. And what organization was it distributed by? A.

This was the "East Side Conference to Defend America and Crush Hitler."

Q. And is that the one you were executive secre-
938 retary of? A. Yes, sir; it is.

• • • •

Q. I will show you Government's for identification Exhibit number 33-X-2, which is a pamphlet which is mostly written in Italian, and ask you whether or not you ever had anything to do with the preparation, publishing or distribution of that pamphlet. A. Yes, sir.

Q. What did you have to do with it, please; tell us. A. Well, a large section of this pamphlet is newspaper clippings from the greatest—largest, I should say—Italian-American newspaper in New York, and they had a long review about the parade that the East Side was going to hold, and I took this because I knew that the Italian people read it, and took a crayon and pointed out what was being said in it, and put in the "We are all united." That is what "Siamo Uniti" means.

Q. That is the Italian of it; correct? A. That is the Italian of "We are all united," and asked people to come to the parade on the East Side.

Q. And did you see that that was printed, published and distributed? A. I was completely responsible for it, sir.

939 Q. And that was for what organization? A. The East Side Conference to Defend America and to Crush Hitler.

• • • •

Q. I will hand you what has been identified as Government's 33-X-3, and ask you whether or not you had anything to do with the preparation, the publishing or the composition or distribution of that leaflet. A. No, sir.

• • • •

953 *Carl Aldo Marzani*

* * * *

Direct Examination—Resumed

By Mr. Ford:

Q. I would like to hand you what has been marked Defendant's Exhibit No. 8.

* * * *

954 Q. I will ask you whether or not you had anything to do with either the preparation or the distribution of that document. A. Yes, sir.

Q. What? A. I was responsible for it, I wrote parts of it, saw that it was printed, had it collected from the printer, and saw to it that it was distributed.

Q. Now, Mr. Marzani, do you know a Louis Harper, who was a witness called in this case by the Government? A Yes. He was a good friend of mine on the East Side.

Q. When did you first meet Louis Harper? A. I don't recall exactly, but it was somewhere in late 1940, the middle of 1940.

Q. Under what circumstances did you meet Louis Harper? A. Well, with Mr. Harper on the stand, that refreshed my recollection, and as I recall, it was something like this:

I came home from the University one evening and came in and there were several people in my apartment, and my wife introduced me to him and said, "Here is my husband Carl," and then introduced him as either Mr. Harper or Louis Harper, but that is the recollection I have.

There was a discussion going on when I walked in referring to something which had happened quite recently on the East Side, of which I am sure there is a

955 record——

Mr. Kelley. Just a moment. That is not respon-

sive to the question. He said under what circumstances did he meet him.

Mr. Ford. I will bring it out.

By Mr. Ford:

Q. How do you happen to recall that Harper was at your house on this occasion? A. Well, part of the reason is because I have been trying to check back over the time after that man was on the witnes stand. The specific thing that recalled it to me was that there had been an accident —incident—at that time around the East Side of which there must be a record in the police files, concerning the beating up of two Negroes; two Negroes and a scout car were involved——

The Court. Just a minute, sir. We are not interested in that.

Mr. Ford. I am now establishing the fact of how he happens to recall back seven years ago of this meeting and the meeting with Harper at his house.

The Court. Yes, sir, and it could have other purposes, Mr. Ford.

Suppose you come to the bench.

Mr. Ford. All right.

956 (Counsel for both sides approached the bench and conferred with the Court, in a low tone of voice as follows:)

The Court. I do not think we are interested in an outbreak here about the Secretary of State and the FBI, sir. We do not want that to occur again.

Mr. Ford. No, and I do not think this will be one of those occasions, your Honor.

The Court. I believe this will lead right up to an attempted prejudice. I am not charging you with that, however.

Please do not misunderstand me, Mr. Ford, but he very significantly makes use of those things.

Mr. Ford. Well, your Honor, would you say that the

Government is making use of it when one of the Government's witnesses took the stand and said that Marzani advocated and fomented the colored situation?

They have testified to it.

The Court. That is a fact.

Mr. Ford. He is stating this is a fact.

The Court. I misunderstood what you said, apparently.

Mr. Ford. The Government witness, on this racial business, has testified that Marzani fomented and agitated discontent among the Negroes.

957 The Court. Let me ask you the purpose of this, then, sir.

Mr. Ford. The purpose of this is to identify it, and then I am going to have him recall what occurred when Mr. Harper was there.

The Court. Are you going to fix the date?

Mr. Ford. Oh, yes. He has fixed it as late in 1940.

Mr. Kelley. We are talking about recruitment of Negroes in the Party.

This is an isolated instance, and studiously will result in prejudice to the jury.

It does not tend to refute what he may have done in the interest of recruiting party members. The mere fact that he might have been appalled at somebody being beat up, it does not disprove it, your Honor.

The Court. I think it is leading to that point, Mr. Ford, particularly in view of the outburst we received from him in connection with the FBI and State Department.

Mr. Ford. Well, he is going to testify that at that time when he came home from the University—and he is testifying this is the first time he knew him—under the circumstances outlined, and that when he came home, that is what they were talking about, and he advised Harper that the way to do that was that if Harper believed that, to write to the Police Commissioner and submit the names, because he felt that the Commissioner would take

958 care of anything that was wrong. And that is first

how he remembers meeting the witness Harper, who is a witness against him, and secondly, those were the circumstances, and that was not a Communist Party meeting but it was——

Mr. Kelley. There could be no fair trial before this jury if you go into the beatings——

The Court. I am still conscious of his outburst with reference to FBI and State Department, sir. I think it was totally uncalled for, and I am leery that that is just what we are going to fall into here, Mr. Ford, and I hope that we are going to go to the jury without prejudicial bias, sympathy or hatred or any feeling for or against.

Mr. Ford. I hope we are too, your Honor.

We can if we have to relate the instances as to what happened and that they are true.

I do not want you to think that I am going to argue racial bias or prejudice, because your Honor has told me how you are going to instruct the jury on that point, and that takes care of that.

The Court. And I certainly am going to instruct them on that. I think I have that duty.

Cannot we go from this thing to tie it up without making this reference?

Mr. Ford. I do not think there is any possible way.

959 I am going to ask him when was the next time he met Harper and where. I have it all mapped out here.

The Court. Well, the prejudice has happened here, so far as this is concerned, but in the future if you find yourself in a situation like that, will you please approach the bench?

Mr. Ford. Would your Honor tell me, if I find myself in that, please?

The Court. In the situation——

Mr. Ford. What situation?

The Court. It seems a very strange thing to me, without

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knowing the facts, that he is going to remember an incident or instance in 1940 because of two Negroes having been beaten up.

Mr. Ford. Your Honor, you have not got quite the clear picture yet, because he has not finished telling all about it. We stopped him before he completed about the meeting at his house with Harper.

The Court. But it is because of that that he remembers everything else.

Mr. Ford. Harper has testified that at that time there was a meeting at the defendant's house which was a Communist Party meeting. We intend to show first that it was not any such thing, and secondly, what it was.

Mr. Kelley. You have not fixed the date or the same year or anything.

960 Mr. Ford: All the matters concerning Hewitt and Drew, I have personally prepared last night, and for the purpose of shortening the trial. I picked out the testimony of those three witnesses which I expected to meet.

The Court. Yes. My point is, as to sympathy and prejudice, which I do not want a part of this case.

Mr. Kelley. If your Honor please, the Government would not want to move for a mistrial after the expense and time involved here, but in the studied manner, as I see it, this witness has chosen his opportunity to inject obviously prejudicial matter into his testimony, and if it persists the Government will have no course but to feel that in the interest of justice it may needs best move for it.

The Court. We will come to that when we reach it.

Mr. Ford. I challenge the statement that Mr. Kelley just made that there is a study.

Mr. Kelley. The record will show.

(Counsel returned to the trial table.)

By Mr. Ford:

Q. Now, at that time that Harper was at your house, were there other people present? A. Yes, sir.

Q. And was there a discussion going on at the time when you arrived at your house from N.Y.U.? A.
961 Yes, there was.

Q. And——

Mr. Ford. Your Honor, I do not see how I can ask it except to bring out the discussion.

The Court. All right, sir.

By Mr. Ford:

Q. And after that discussion regarding certain incidents that happened in the neighborhood, was it? A. That is correct.

Q. And you talked it over with Mr. Harper and the others? A. That is right. I said that I was sure——

Q. What did you say to do about it? Do not say what he was writing about, but say what you told him to do about it. A. I told him I was sure the Police Commissioner would not like what had taken place; would not condone such actions, and I suggested that a letter be drawn up by whoever was there as witnesses, and the neighborhood people, to draw up such a letter and send it.

Q. Now, at that time, was that a meeting of the Communist Party, or was there anything mentioned on that occasion when Harper was at your house about communism? A. No, sir.

Q. Was there anything mentioned other than what you have described here in a general way took place?
962 A. No, sir.

Q. Now, other than that occasion, was Harper at your home on any other occasions, in addition to that? A. Yes, sir.

Q. I wonder if you could tell me under what circumstances he was there. A. Well, I can't recall every specific detail. I do know that he was there several times, because we were quite friendly. In one case I know he called for me when we were going to a meeting at a church that he had asked me to speak to.

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Q. Do you know the name of that church? A. I do now, on the basis of testimony here. I assume that it was the Church of the Living God.

Q. And when you say he called for you, you mean he came to your place? A. That is correct.

Q. And you left with him? A. That is right.

Q. Now, was there any other occasion when Harper was at your home? A. As I say, I am sure there have been, but I just can't put my finger on them.

Q. Now, Harper has testified here that you were never at his home.

963 Now, is that true or false? A. False.

Q. Were you at Harper's home? A. Yes, sir.

Q. On approximately how many occasions do you remember your being at Harper's home? A. At least three times with a definite recollection. There may have been more.

Q. I wonder if you will tell us under what circumstances you were at Harper's home? A. One specific circumstance was—I should mention that some time in knowing Harper, he had explained to me what the National Negro Congress was, its aims, and so on, and had asked me whether I would ever speak; and I said if it didn't conflict with what I was doing I should be happy to help at any time, he should feel free to call me.

And some time, I don't know whether it was on the street or just exactly where—it must have been on the street, I guess— he asked me would I speak at a meeting and I asked him when, and he told me, and it must have been all right, not conflicting with my classes, and I said sure.

Then he suggested that I stop at his house and discuss it, and we did. And that was one specific time.

Another time he had asked me up there, he had several people there discussing about housing problems.

964 And that sticks in my mind because when I came

home I told my wife that I had never seen such a place as where Harper was living, and it sticks in my mind so very clearly because he was so poor that he couldn't even afford electricity and he had lamps or either candles or lamps in that house.

Q. Was there any electricity in the house where you went to visit him? A. I think so. I remember—I think there were lights in the hallway, and I think it was poverty rather than anything else.

Q. Now, taking up the occasion when you were at this church, I wonder if you would tell us what was that a meeting of, at the church—do you recall? A. It was told me that it was and introduced as a meeting of the National Negro Congress .

Q. And when you were there at that church did you see Harper? A. Oh, yes, we went together.

Q. And did you speak in that church for the National Negro Congress? A. I did.

Q. And what were the things you said? A. Well, I can't tell you word by word, but generally—

Q. In substance. A. It was that there were
965 problems on the East Side, particularly housing. The East Side itself is very bad. Tenements have been condemned since 1890. Luckily, it has all been cleared up now. The Metropolitan Life Insurance is putting up some wonderful housing projects.

Q. Tell us what you said there at the meeting, amongst other things, about housing. A. I said that if—you know, things would have to be done, but that it would require patience, organization, good will, and most important of all, and it was the thing I was most interested in, that we were all in this thing together, that they should not think any group in the community was more responsible than some other group, that people on the East Side all had basically the same problem.

Q. And did you tell them that at that meeting? A. Yes, sir, in substance.

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Q. At any time when Harper was at your house or you at Harper's house, was there ever a Communist Party meeting? A. No, sir.

Q. At any time that Harper was at your house or you at his house, was communism ever discussed at any of those visits? A. No, sir.

Q. To your knowledge, was Harper a member of the Communist Party? A. Not that I know of, al-
966 though I did see him at the Communist Party headquarters on Avenue C, and I saw him with the local, the well known Communist organizer on the East Side.

Q. Who was he? A. His name was Appel, Bob Appel.

Q. When you saw Harper in that area on that occasion with a man by the name of Bob Appel, was Bob Appel well known throughout the whole East Side as a Communist leader? A. Yes, sir.

Q. Do you know or did you ever know a George Hewitt, alias Tim Holmes, alias William Jackson? A. I never knew or saw that man in my whole life, until this trial.

Q. Now I will ask you, have you ever met or been introduced to an Archer Drew? A. No, sir.

Q. Have you ever been introduced or met a person by the name of Bill Easley? A. No, sir.

Q. Have you ever met or have you ever been introduced to a person by the name of William Johnson? A. No, sir.

Q. To your knowledge, have you ever seen the witness Drew other than at this trial? A. Well, I tried
967 very hard since this trial began, and the man went on the stand, to place him. I tried very hard to recollect his face, his figure. To this moment I have not succeeded in doing so. I would not deny that I might have seen him or that he might have seen me.

According to his testimony, he was at least one place where I know that I was, and that was the Church of the Living God.

Q. Could Drew have been to the church, at that meeting, without your particularly recognizing him? A. Yes.

The Court. Did I understand you to say, sir, that you only saw Drew at this trial, except for that possible meeting at the Church of the Living God?

The Witness. To the best of my recollection. I didn't say that I saw him at that place.

The Court. You said you only saw him at this trial?

The Witness. This trial is the only place I saw the man Drew.

The Court. Very well. Excuse me.

By Mr. Ford:

Q. Now, there has been a building or meeting place mentioned in this trial as being at Avenue C, somewhere around Fifth or Sixth Street, I think it is. Have you ever been to that building? A. Yes, sir. Many
968 times.

Q. Would you kindly tell us under what circumstances you have been to that building on Avenue C and Fifth and Sixth?

By the way, first, how far is it from where you live? A. Oh, three or four blocks; something like that.

Q. Under what circumstances were you at that building? A. I was on my way home from the University and very often in the evening—often; once in a while, I should say—I would stop there either to see a friend or to pick up my wife or sometimes I would go there for an election rally. I can recall at least one occasion where I was at an election rally. I think once I was at a meeting of a discussion group, and at least once, and perhaps more, at a neighborhood dance where the whole neighborhood turned out and had dances there.

Q. Do you recall in addition to that, other times and circumstances when you were there at that building? A. Not offhand.

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Q. Now, on any of these occasions when you were at that building, did you see Officer Drew there? A. Not that I recall.

Q. Have you ever been a member of the Communist Party? A. No, sir.

Q. Have you ever attended meetings of the Communist Party anywhere? A. No, sir, not as Communist
969 Party meetings.

Q. What do you mean by that? A. Well, I assume that if there was an election rally, for example, the specific one I happened to remember was a Communist Party candidate, Earl Browder. There was a big election, a lot of noise in the newspapers, I was very curious, and I attended the election rally. Obviously it was a Communist candidate speaking. I do not consider such a meeting a Communist Party meeting.

Q. Have you ever contributed any services for the Communist Party? A. No, sir. May I say one thing there, because it has been brought out before?

Q. Yes. A. It was brought up at the Civil Service Commission and it was brought up and settled then.

The question was raised that I signed a petition for the Communist Party——

The Court. Just a minute, please.

Is this responsive to your question?

Mr. Ford. I think so, your Honor.

The Court. Read the question, please.

Mr. Ford. May I reframe the question?

The Court. Yes, sir.

970 By Mr. Ford:

Q. Has the question ever been brought up to you regarding the signing of what are referred to as Communist Party petitions? A. Yes, it has.

The Court. Was that in your original question, sir?

Mr. Ford. Yes, sir.

By Mr. Ford:

Q. What do you have to say about that? A. What I started to say was that the question of whether that was a service or not has been discussed with me, and I would like to say that the purpose of signing a Communist Party petition or collecting a Communist Party signature was in order that the Communist Party be on the ballot so the people could decide whether or not the Communist Party candidate should be elected or should not be elected.

I do not consider that a service to the Communist Party. I consider that a service to myself as an American democrat and to the American way of life.

The Court. Just a minute.

Mr. Ford. Well, he has given the purpose and the reason why he——

The Court. You asked him if he signed it, sir.

Mr. Ford. Yes, and then I asked him to explain that, your Honor.

971 The Court. I didn't get that part.

By Mr. Ford:

Q. Have you ever distributed any leaflets or pamphlets for the Communist Party? A. No, sir.

Q. Have you ever composed or edited any leaflets or pamphlets for the Communist Party? A. No, sir.

Q. Have you ever lectured or given any instructions on the Communist Party? A. No, sir.

Q. Have you ever discussed Communism or the Communist Party with your wife? A. Very seldom, sir. It was one of the things we didn't see eye to eye, and we just stayed off the subject.

Q. Have you ever gone under the name of Tony Whales? A. No, sir.

Q. Have you ever used the name Tony Whales? A. No, sir.

Q. Have you ever been called Tony Whales? A. I have never been called Tony Whales. I was often called Tony.

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Q. What, if any, political parties have you been a member of? A. I have been a member of the Labor
972 Party in England, a Labor Club, and I have been a member of the American Labor Party in New York City.

Q. Were you ever a registered voter in New York City? A. Yes, sir.

Q. In what party were you a registered voter? A. The American Labor Party.

Q. Have you ever cast your vote at any election for the Communist Party or any of its candidates? A. No, sir.

Mr. Kelley. Just a moment. I object to it as incapable of substantiation, of proof.

The Court. He has answered, sir.

By Mr. Ford:

Q. What are the political parties of the candidates you did vote for and who are some of the candidates? A. Roosevelt—

The Court. Just a minute. What is that for?

Mr. Ford. To show that the way he voted is what he is. That he is known by what he does, and if he voted tickets other than the Communist Party, it shows that he is not a Communist, but that he is of that party for which he voted and the act speaks louder than any words.

Mr. Kelley. I object to it on the specific grounds that it is irrelevant and immaterial to the issues of this case.

The Court I doubt the materiality of it, sir.
973 I will let him answer.

Mr. Ford. The Court says you may answer.

The Witness. I specifically remember voting for a Congressman Klein, who was a Congressman on the East Side, and there is a letter in the record of the Civil Service Commission——

The Court. Just a minute, sir.

By Mr. Ford:

Q. What party was he? A. Democratic Party.

The Court. May we ask you, Mr. Witness, to keep yourself in restraint, sir?

The Witness. Yes, sir.

The Court. No one is deaf, and give us an opportunity of hearing what you are saying.

The Witness. Yes, sir.

By Mr. Ford:

Q. You spoke of voting for Congressman Klein. What party was he? A. Democratic Party.

Q. Have you ever said, "Now the time is ripe for revolution"? A. That is just silly.

The Court. Just a minute.

974 Do you want him to answer your question, sir?

Mr. Ford. Yes, sir.

Now, here is the question:

Mr. Kelley. Wait a moment. Let's keep this record straight.

Mr. Ford. Surely we want to keep the record straight.

Mr. Kelley. The whole thing is unresponsive. He has not answered whether he said it or not.

Mr. Ford. May I put it again, and will you answer this witness yes or no, please?

The Witness. All right.

By Mr. Ford:

Q. Have you ever said, "Now the time is ripe for revolution"? A. No, sir.

Q. Have you ever advocated revolution or the overthrow of this government? A. No, sir, and I couldn't have.

Q. Have you ever advocated disintegration of the morale of the armed services? A. I was a member of the armed services, sir.

The Court. That is not responsive.

Mr. Ford. Answer it yes or no.

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The Witness. No, sir.

975 By Mr. Ford:

Q. Have you ever opposed conscription? A. No, sir.

Q. Have you ever opposed what was referred to as the Smith anti-strike bill? A. Yes, sir.

Q. Have you ever counseled or instructed anyone to sow resentment and discontent among the Negroes by agitating racial discrimination? A. No, sir. On the contrary, I have always tried to remove the causes of such discontent.

Q. Have you ever been accused of being a member of the Communist Party by the Police Department of New York? A. Yes, sir, 1941, and they apologized for it.

The Court. Now, Mr. Witness, just a minute.

Mr. Ford. Wait a minute now.

The Court. You are a man of some learning. Now, you can restrain yourself, and you wait until the question is put, and then answer the question.

By Mr. Ford:

Q. Now, Mr. Marzani,—

The Court. Now, have I made myself clear to you, sir?

The Witness. Yes, sir, and I am very sorry.

By Mr. Ford:

Q. Where is your wife at this time? A. She is

976 home, sir.

Q. Is she physically able to be in attendance at this trial as a witness? A. She is five months pregnant and under the advice of doctors she has been urged not to go under the excitement of this trial.

Mr. Ford. Now, will your Honor just indulge me for a minute?

The Court. Yes.

Mr. Ford. Would your Honor care to have me explain this at the bench? I want to ask some further questions.

The Court. Very well.

(Counsel for both sides approached the bench and con-

ferred with the Court, in a low tone of voice, as follows:)

Mr. Ford: I am now going to ask him whether or not in July, 1946, he entered into a contract—that in July, 1946, I want to ask him about that time in connection with a moving picture which he composed and produced, known as "The Deadline for Action." And the purpose is this: Had he been permitted to answer yes and testify about it, this would be my proffer. I would show that on or about July, 1946, he entered into a contract with the United Electrical, Radio and Machine Workers of America, a CIO Union, to produce a film that he personally wrote the script for, produced it, and directed that film, which was
977 entitled, "Deadline for Action."

That the film accurately embodies the beliefs and views which he has consistently held since 1936.

That the film was completed on or about August 30, 1946, and first publicly shown on September 5, 1946; that thereafter the newspapers, particularly the World-Telegram in New York, carried publicity about this film as a Communist film, particularly in signed articles by Frederick Woltman.

He, by the way, is the man whom the witness Hewitt said called him about a picture in the paper about that.

If the film were permitted to be shown, and I have the film in my possession, without any great display I am prepared to show it here to your Honor and the jury in its entire form. It can be shown in the courtroom. It runs for about thirty minutes. We have all the equipment. I didn't bring it to the courtroom for display, but we have the equipment ready to show it, and that the incidents, the graphs, the dialogue and the speeches are highly critical of large corporations and in favor of labor unions.

It would also show his advocacy of views as being entirely constitutional and wholly American; that the picture closes with an advocacy that Americans should go to the

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ballot box to remedy any civic wrongs that, they think are such.

978 He has stated that he was in this moving-picture business. He stated he was in there to make money, and he stated he made the picture, and stated he made it to portray labor, and all.

The Court. And I think practically everything you have in there has been in evidence, and as to the showing of the picture, we will not do that, sir.

Mr. Ford. May I have an exception to your Honor's ruling?

The Court. Yes, sir.

As a matter of fact, Mr. Ford, it could well be that what he would put in the picture would not portray what he was doing, because that is a commercial undertaking. He would be wanting to sell it to people and I assume the Americans are not all Communists.

Mr. Ford: But he would testify that that does do that, advocates his personal views, and it would negative the charge that he advocates revolution.

The Court. He has specifically stated that too, sir.

Mr. Ford. But that is a living object and a product of it.

May I have an exception?

The Court. Yes.

Mr. Kelley. I would like the record clear that the Government's position on the proffer is that it is by virtue of its very description by counsel, a self-serving doc-

979 ument or declaration, and that other than that, it is entirely incompetent, irrelevant and immaterial.

Mr. Ford. May I have an exception?

The Court. Yes.

(Counsel returned to the trial table.)

* * * *

By Mr. Ford:

Q. Did Panuch, your boss in the State Department, ever ask you whether you had ever been a member of the Communist Party? A. No, sir.

Q. Did Panuch ever ask you if you had contributed services to the Communist Party? A. No, sir.

Q. Did Panuch ever ask whether or not you had ever attended meetings of the Communist Party? A. No, sir.

• • • •

980 *Cross-Examination*

By Mr. Kelley:

Q. Mr. Marzani, I believe you testified this morning that you went as a fellowship student to Oxford University some time in the late 1930's. When was it? A. 1936.

Q. And that while a resident of England you make a trip to Spain? A. That is correct.

Q. Did you make but one journey there? A. That is correct.

Q. Did you attempt to make a second? A. Yes, I did.

Q. Did you apply for a passport? A. I applied for a visa, sir, in Paris.

Q. I will ask you to examine defendant's 11 in evidence. Were you refused the consent of your government to go to Spain? A. Everybody was being refused, sir.

Mr. Ford. Wait a minute. I object, as immaterial, and outside the scope of the direct.

The Court. He has answered it, Mr. Ford.

By Mr. Kelley:

Q. Now, I believe you also testified on direct examination and listed the number of countries that you
981 visited on your return journey to the United States. Is that right? A. That is correct, sir.

Q. And in response to a separate and specific question by your counsel you stated that you had not gone to Russit? A. That is correct.

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Q. Now I will ask you whether or not at any time from the moment you contemplated your return journey to this country, you intended to go to Russia? A. I would have liked to have gone, sir, and may I explain why?

Q. Just a moment. Answer my question.

At any time did you intend to go to Russia? A. I wanted to go, sir. I had the—the intention depended upon the Soviet Government as well as myself.

Q. And did you intend to go to Siberia? A. That was one of the possibilities if the Soviet Government would have allowed it. May I explain?

The Court. Was it your intention to go, sir?

The Witness. May I explain?

The Court. You can answer the question, if you intended to go, subject to getting in by the authority of the Russian Government.

The Witness. My wife and I had three alternate routes to go back——

982 Mr. Kelley. If your Honor please, I move that it be stricken.

The Court. Mr. Witness, I think you understand the question, sir.

The Witness. Sir, I am sorry.

The Court. Would you mind answering the question, sir?

The Witness. I had part intention of going; one-third intention.

By Mr. Kelley:

Q. Did you make any effort to get into Russia? A. I certainly did. I applied for a visa.

Q. You wrote a letter, did you not, back to someone in the United States that expressed that intention? A. I didn't have to write a letter. I don't know. I wrote lots of letters.

Q. Do you have any recollection of writing to anyone in this country expressing your desire and intention to go

to Russia and Siberia? A. I never kept my intentions secret, sir.

Q. You have not answered my question. A. I don't know, sir. I may have written letters, yes.

Q. Did you state that you were a member of the Phi Beta Kappa? A. That is correct; yes, sir.

Q. As an intelligent, educated man, I will ask you to listen, please, to my question before you answer it
983 and endeavor only to answer my question.

Mr. Ford. I object to that and move your Honor to withdraw a juror on account of the form of the question and the substance stated in it.

The Court. I will deny it, sir.

Mr. Ford. May I have an exception?

The Court. I think the witness has not answered the question, Mr. Ford.

Mr. Ford. That is not the part I am objecting to, your Honor. It is the things he stated in his question.

The Court. That he was a member of Phi Beta Kappa?

Mr. Ford. And the rest of it as to intelligence, and so on. The entire question.

The Court. I will deny it, sir.

Now, Mr. Witness, the Court will ask you to please listen to the question and to answer the question.

The Witness. I am trying, sir.

The Court. If you can, do; and if you can't, say you can't.

The Witness. Yes, sir.

By Mr. Kelley:

Q. Have you no present recollection of writing to anyone in the United States while you were in England and expressing the desire and intention of visiting Russia and Siberia? A. Not at present, sir, no.

984 Q. Do you have any present recollection that a letter or communication of yours or part of the same was incorporated in what is known as the Williams

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Alumni Review, during the period of your residence in England? A. I have no recollection, sir.

* * * * *

Q. I show you what has been marked for identification Government's Exhibit 37.

I want you to read the quoted portion appearing thereon. Do not read it aloud. Read it to yourself.

And state whether or not it refreshes to any extent your recollection as to whether you wrote or communicated with anyone in this country your desire and intention to visit Russia and Siberia.

Mr. Ford. Do that, but before you answer I want to be heard on it.

(The witness complied.)

Mr. Ford. Your Honor, I object to the question and the answer. Would your Honor care to look at the ex-
985 hibit, first.

The Court. May I see the exhibit?

The Witness. Yes, sir.

(The exhibit was handed to the Court.)

The Court. Yes. Do you want to approach the bench?

(Counsel for both sides approached the bench and conferred with the Court, in a low tone of voice, as follows:)

Mr. Kelley. He has not yet answered the question.

The Court. No.

Mr. Ford. I object to it, first, because it purports to be a printed article in some book or magazine which is unidentified; unidentified as to date or as to magazine. It does not show he had anything to do with the publishing of it, the preparing of it, the inserting of it in the magazine or book or pamphlet, or whatever it came from, and is in no way connected up with him.

Mr. Kelley. Your Honor, I have not offered it. I merely asked him if it does refresh his recollection as to what it is.

I submit if it does refresh him, I can ask him what it is.

Mr. Ford. Secondly, that he has already testified that he did have a desire to go there.

The Court. He said he had a one-third intention.

Mr. Ford. And that he had a like, that he would have liked to have gone there to both places.

986 The Court. I will let him answer the question.

Mr. Ford. Exception.

The Court. Yes.

(Counsel returned to the trial table.)

By Mr. Kelley:

Q. Having read what has been marked Government's 37 for identification, is your recollection now refreshed?

A. Yes, sir.

Q. What is your recollection as to whether or not you did write to someone in this country— A. As I stated before, the recollection is that we had several plans as to how——

Mr. Kelley. No. I say, what is your recollection, refreshed?

The Witness. Your Honor, may I explain?

Mr. Ford. Let him put his question.

Mr. Kelley. I move the witness be instructed. Obviously he began to answer in an unresponsive way.

Mr. Ford. That is why I thought I would stop him.

Mr. Kelley. I will stop him.

The Witness. May I answer the question?

The Court. Mr. Witness, let me again say to you, sir, it is your function to answer the questions that the counsel puts.

987 The Witness. Yes, sir.

The Court. If you can. If you cannot, say you cannot.

The Witness. Yes, sir.

The Court. It is also your function to give your counsel an opportunity to object, if he does, and the reverse of that, sir.

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The Witness. Yes, sir.

The Court. Now, counsel put a question to you which in the Court's opinion is susceptible of an answer. If you can answer it, answer it, and if you cannot, say so.

The Witness. Yes, sir.

Will you repeat the question again?

Mr. Kelley. I will restate it.

By Mr. Kelley:

Q. Having refreshed yourself from Government's 37, what is your testimony as to whether or not you wrote or communicated with someone in this country while you were in England that you intended to go to Russia and Siberia? A. I have no recollection of writing to anyone in this country about that. On the basis of what you have shown me, I probably wrote someone. I have no idea whom or why.

Q. To that effect? A. If that clipping is correct; yes, sir.

• • • •

999 Q. Mr. Marzani, when did you first become connected in any way with the East Side Conference to Defend America and Smash Hitler? A. I don't know exactly, but it was in the fall. I would say about September, perhaps. Somewhere in there, in 1941.

Q. Are you in a position to say that it was not as early as August 12, of 1941? A. As far as my own personal connection, I am not, no. I think it was started quite early.

1000 Q. Are you in a position to state that you were not publicly elected to an office in that organization on the 12th day of August, 1941? A. No, I am not in a position, sir.

Q. That could have been? A. Yes, it could have been.

• • • •

1003 Q. I show you what has been marked Government's Exhibit 38 for identification, and particularly

direct your attention to this portion where I am now pointing, and ask you to state whether or not the reading of it refreshes your recollection as to the date you were named an officer of the organization we were discussing.

• • • •

The Witness. Yes, it does.

By Mr. Kelley:

Q. Now, can you state on what date you were first named an officer of that organization? A. No, I cannot, sir.

Q. To what extent are you refreshed? A. Well, August 14, the newspaper is dated August 14, on Thursday. It says on Tuesday there was such a rally. So I was at that time executive secretary. Whether it was the 10th or 11th, or a week before, I have no recollection, sir.

Q. But at least, was it Tuesday prior to August 14? Is that right? A. Yes, according to that.

Q. Now, to your own recollection, do you remember the date that Germany attacked Russia? A. Yes, sir.

1004 Q. What date was that? A. June 22, 1941.

Q. Now, the organization known as the East Side Committee to Defend America and Smash Hitler did not come into existence until after the date on which Germany attacked Russia, did it? A. That I don't know, sir.

Q. Your recollection was a moment ago that it was in September that this organization was formed.

• • • •

The Court. Do you know when the East Side defense group came into being, sir?

The Witness. No, sir, I do not.

The Court. Do you know when you first became associated with it.

The Witness. On the basis of what has gone on before,

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I said my first recollection was around. September. It now develops it was about August.|

The Court. I think it follows from that, Mr. Kelley, that it was after June 22.

1005 Mr. Kelley. After June 22, yes.

By Mr. Kelley:

Q. After June 22, 1941, did you publicly advocate cooperation with the selective service act and conscription act? A. I imagine I did. I have no recollection. That was one of the functions of the committee.

Q. Did you ever know anyone in the neighborhood of your residence by the name of Mary Fernandez? A. I knew lots of Marys, and the name Fernandez is vaguely familiar, sir, but I cannot place it.

• • • •

Q. I show you what have been marked Government's Exhibits 33-X-1, X-2, and X-3.

Now you have testified that you have seen facsimiles of two of those exhibits before and that you never saw this or a facsimile of Government's X-3; is that right? A. That is correct, sir.

Q. Do you recall the testimony of Detective Archer Drew that he was present at the home of a Mary Fernandez when you delivered all three of those items—X-1, 2, and 3—at that place?

• • • •

1006 A. Vaguely. I don't remember a specific reference to the three.

Q. I will ask you specifically, did you ever deliver any pamphlets or material to the home of a Mary Fernandez? A. I never delivered these things to the home of Mary Fernandez, sir.

Q. I said any pamphlets or anything. A. Not that I recall.

Q. Are you able to say you were never in the home of Mary Fernandez? A. No, I cannot say that, because I cannot recall who the person is.

Q. Do you know a Mary Morse? A. No, sir, I
1007 don't think so.

Q. Didn't you have lunch in 1945 in the City of Washington with Mary Morse and her husband, whom she had just married, and they were on their honeymoon? A. Oh, yes, sir, but I do not recall the name Morse, sir.

Q. What name do you remember the people I have just referred you to as having lunch with? A. Mary.

Q. Just Mary? A. Yes, sir. That is all I knew her as. And now that you mention it, her name may have been Fernandez, but I do not recall, sir.

Q. And you had lunch with this person you knew as Mary in 1945. A. Somewhere in that time, during the period, in Washington I had luncheon with a girl named Mary and her husband; they were newly married, that is how I recollect.

Q. Had you met her husband on another occasion here in Washington? A. No, I had not.

Q. What did she say about him? Did she say, "This is my husband"——

• • • •

1008 The Witness. I can't recall, sir, what she said or didn't say. I know my wife told me we were going to have lunch with Mary and her husband and when we go and meet two people and it is Mary and her husband, I assume it is Mary and her husband.

By Mr. Kelley:

Q. And at no time throughout that incident when you made the acquaintance of her husband did you ever know any name with respect to her or her husband other than Mary? A. As I say, Mary is the one I recollect very distinctly, and I knew her as Mary very distinctly.

Q. Now, you know the person I am talking about anyhow, don't you? A. Yes, sir.

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Q. Were you ever at her home in the East Side of New York in 1940 or 1941? A. I may have been, sir. I don't recall. That is seven years ago.

Q. And you are having difficulty remembering such matters seven years back?

Mr. Ford. I object.

1009 Mr. Kelley. I am testing his memory, your Honor.

The Court. Test it by asking questions.

Mr. Kelley. All right.

By Mr. Kelley:

Q. You testified earlier here, did you not, that you remember precisely what was said at a meeting when you first met Louis Harper?

Mr. Ford. I object, your Honor, because of the word "precisely," because I think your Honor said there were certain things that I was not to refer to in the conversation, and I obeyed your Honor, and I think this would violate that.

The Court. What are you indicating?

Mr. Kelley. Trying to establish how good or bad or convenient this man's memory is.

The Court. Well, sir, ask him questions and I will pass on them.

By Mr. Kelley:

Q. You do remember distinctly what was said by you and what was said by others on the occasion you first met Louis Harper; is that right? A. I don't remember distinctly. I remember the subject matter and there is a reason for it which I am not referring to, because I am not allowed to refer to it.

Q. Now, you say you knew Mary, and your wife told you that she was in Washington and you were going to have lunch. When your wife told you that, did you

1010 know the individual she was talking about? A. Yes, I did.

Q. Describe her. A. Well, she was, as I recollect, a rather dark girl, about—shorter than you are. That is about all, I think, that I can recollect right now.

Q. You can't remember where she lived with reference to your house in New York? A. She lived above my house. That is, I lived on 6th Street and she lived above that. Just exactly where, I am a little vague.

Q. And you are so vague you can't remember whether you were ever in her home?

Mr. Ford. Wait a minute. I object to that as being argumentative.

The Court. Were you ever in her home before?

The Witness. I don't recall, sir.

The Court. All right.

By Mr. Kelley:

Q. You may have been? A. Yes, sir. I was in many homes on the East Side.

Q. Do you recall Detective Drew testifying that at meetings of the Communist Party attended by himself and yourself, there were on occasions present a woman named
1011 Mary Fernandez, also known to him as Mary Farnum? A. I recollect Detective Drew testifying to that—Jean something, that is all.

Q. Do you admit or deny that such took place? A. In my presence, sir, I deny it.

Q. In what? A. In my presence. I wasn't there. I don't know who he meant, where or when.

Q. And you don't know who he meant when he said Mary Fernandez, also known to me as Mary Farnum? A. Not at the time he testified, sir.

Q. Do you remember meeting a Mary Fernandez, or this same Mary with whom you had lunch—strike the question.

Referring now to the individual whom you recall only as Mary, with whom you had lunch in Washington, do you recall knowing her when you were the executive secretary of

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the East Side Conference? A. I remember the girl, sir, all through the East Side. I don't remember any particular date or time.

Q. Now you say you remember her—Mary—all through. In what other connections do you remember her? A. I remember Mary as a friend of my wife's; someone my wife knew.

Q. Do you remember her being in your home? A. Not specifically, although she could very well have been.

1012 Q. On how many occasions would you say you have talked with her and seen her back at the time you lived in New York? A. I couldn't say, sir. Several times.

Q. Do you remember Detective Drew testifying that at the meetings of the Communist Party which he attended and which he testified you attended, there was present an individual known to him as Sema Sverdlove and also known to him as Lena Powers? A. I recollect him talking about Sema Sverdlove, sir.

Q. Don't you recall him saying she was also known to him as Lena Powers? A. It didn't particularly strike me.

Q. Do you know Sema Sverdlove? A. Oh, yes, sir.

Q. You know her well? A. Pretty well. I have known her husband a lot better.

Q. You have entertained the Sverdloves in Washington, haven't you? A. Oh, yes.

Q. On particular occasions? A. I don't remember the time.

Q. Many times, would you say? A. I don't think so.

Q. How many times, would you say? A. I

1013 couldn't. A couple. It wouldn't be more than three. It was at least once.

Q. Have you no memory of entertaining them over a New Year's holiday? A. No, I am sorry, I don't remember any particular New Year you are referring to.

Q. Did you ever know Sema Sverdlove by the name of Lena Powers? A. No, sir, I did not.

Q. You visited socially back and forth with Sema Sverdlove and her husband frequently in New York when you lived there, didn't you? A. Oh, yes, sir.

Q. Where did they live in reference to you? A. They lived—I think they had two addresses. At one time I think they were somewhere on 13th Street, and another time I think they lived on 2nd Avenue about—I don't know exactly, but there was a St. Mark's Church at the corner and they lived at 2nd Avenue off that church.

Q. You testified earlier that—I don't want to put a word in your mouth, I don't think it was "notorious"—that a Bob Appel was well known throughout that entire area as an official of the Communist Party; is that what you testified to? A. Substantially, yes.

1014 Q. You knew him, did you? A. Yes, I did.

Q. Do you know when and where you met him? A. No, I don't.

Q. For how long a period did you know him? A. Oh, I would say about a year or so, '40 or '41.

Q. Did you used to see him and talk with him at the Communist Party headquarters at 44 Avenue C? A. Sometimes; yes.

Q. You say you frequently went there? A. Frequently? I went there several times.

Q. What would you call several? A. Oh, seven, eight, nine, a dozen.

Q. Now, you testified that on occasion when returning from N.Y.U. you would stop by there at the Communist Party headquarters to call for your wife. Did I understand you to say that? A. That is correct.

Q. What was the occasion of calling for her at that place? A. Well, she would say, "Tonight when you come home, stop by and see if I am there."

Q. What business, if you know, would she have there?

Mr. Ford. I object to what business his wife would have. His wife is not on trial.

1015 The Court. Sustained.

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By Mr. Kelley:

Q. Did you frequently find her there? A. Sometimes, yes.

Q. And you state that you never attended a meeting of the Communist Party there? A. I stated, as I recall, sir, that I never attended a meeting of the Communist Party; that is to say, there were election rallies specifically——

Q. Did you say rally or rallies? A. One; perhaps two. One I remember distinctly.

Q. All right. Aside from those. A. I did not consider that a meeting of the Communist Party.

Q. Let's throw those out.

Now, what other meetings were you at there?

A. Dances, once or twice, a discussion group that was being held on Spain once, that I recollect definitely. It may have been one or two other times, but that is about all.

Q. As to these one or two other times, what was the nature of the meeting? A. I say, there may have been, because I don't remember.

Q. You have told us all that you remember now concerning meetings that you attended at 44 Avenue C?

1016 A. To the best of my recollection; yes, sir.

Q. Did the Communist Party conduct street meetings from time to time in that area? A. I imagine they did.

Q. I don't want what you imagine. Did you ever see any?

The Court. Do you know, sir?

The Witness. Yes. You can't tell they are Communist meetings. In other words, you walk down the street and it may be an American Labor Party or Communist Party. When you walk by, you hear, if you catch it, you know, if you don't, you don't.

By Mr. Kelley:

Q. When did you catch it, how did you know it was a Communist Party? A. You catch it if someone said they are speaking for the Communist Party.

Q. Wouldn't they distribute literature with the name of the Communist Party on occasions? A. On occasions I imagine they did.

Q. And would you frequently come across meetings of that character, the Communist Party, down there? A. I wouldn't say frequently, sir.

Q. Well, many times, several times? A. No, several times.

1017 Q. And did you observe or pay any attention to what was being said at those meetings? A. I would stop by for a few minutes if I was in a hurry, and then go on.

Q. Did it come to your knowledge in that way, or otherwise, that prior to the 22nd day of June, 1941, the Communist Party in that area opposed repeal of the neutrality law? A. I knew the Communist Party opposed it, from the New York Times and the New York Herald-Tribune.

Q. That was your source of knowledge? A. My main source of knowledge was the New York Herald-Tribune which I read every day.

Q. And were you aware at that time that the Communist Party prior to June 22nd, 1941, opposed military conscription in the United States? A. I think I did, yes.

Q. Well, is there any doubt about it in your mind? A. No.

Q. Were you similarly aware that the Communist Party, prior to June 22, 1941, was opposed to lend-lease aid to England? A. I think that is correct.

Q. And similarly aware that the Party opposed passage of an anti-strike bill? A. That I don't know,

1018 but I assume they would.

Q. And similarly as to collaboration between the party members, the Roosevelt Administration and Great Britain. Do you know their attitude on that? A. I don't understand that question.

Q. Were you aware of the attitude of the Communist

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Party in that connection prior to June 22, 1941? A. In connection with what?

The Court. Between the United States and Great Britain.

Mr. Kelley. Yes, between the Roosevelt Administration and Great Britain.

The Witness. I know they opposed lend-lease and such matters; therefore they opposed the Administration.

By Mr. Kelley:

Q. And are you aware of the fact that after June 22, 1941, the Communist Party advocated all-out aid to Britain and to Russia? A. I assume they did, yes, sir.

Q. And they advocated that after the attack of Germany on Russia and before Pearl Harbor, did they not? A. I imagine they did, yes.

Q. Well, we don't want your imagination. If you don't know, say so. A. Well, sir, I know a good deal about what was going on in the country at that time, and I assume that since the Communist Party had certain
1019 positions, that certain things would follow from them. In other words, since I know they wanted aid to Russia, therefore I would assume that they wanted us to send that aid. That is all I mean, when I say I assume.

Q. Do you know what I mean when I use the expression Communist Party line?

Have you ever heard it? A. Yes, sir.

Q. And you were aware that the line abruptly changed after June 22, when Germany attacked Russia; you know that? A. So I was told; yes, sir.

Q. And do you deny at any time prior to July 22, 1941, having personally opposed conscription? A. I do, sir.

Q. Do you similarly deny at the same period having opposed the repeal of the neutrality law? A. I do, sir.

Q. Do you admit after June 22, 1941, and prior to Pearl Harbor, having personally advocated all-out aid to Russia and England? A. And China; yes, sir.

Q. On your trip to Europe, while in the military status, I believe you testified you went to London? A. That is correct, sir.

1020 Q. And to England—to France, I should say. A. That is correct.

Q. Now, what other countries did you go to, whether on official business or unofficial business, during your period in Europe in military status? A. I went nowhere on unofficial business.

On official business I was in France for a short time, Germany for a short time, and in Italy for a longer time.

Q. Were you in Spain or Portugal at that time? A. No, sir, I was not.

Q. And you made only one trip overseas while in military status? A. I was overseas eight months.

Q. You haven't answered my question.

The Court. Do you understand the question, sir?

He asked you if you made more than one trip in military status.

The Witness. No, sir; one trip.

• • • •

Q. Mr. Marzani, I show you what has been marked in evidence as Government's Exhibit 25. Can you identify it? A. Yes, sir. I have seen this before.

1021 Q. What is it? A. It is an independent nominating petition for the Communist Party in the name of an independent body making nomination.

Q. For whom, nominating whom? A. Earl Browder to Representative in Congress, Congressional candidate.

Q. Does your signature appear thereon? A. Yes, it does.

Q. In what capacity? A. In the capacity of a citizen who thinks the man should be on the ballot.

Q. Well, you are in the capacity of a signer or a petitioner, aren't you? A. That is correct, as a signer.

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Q. Other names appear thereon of other petitioners or signers, do they not? A. They do.

Q. And at the lower part appears the name of a circulator, does it not? A. That is quite correct.

Q. Did you know that circulator, Henry Cooper? A. I don't recall him, sir.

Q. You may have known him but you don't recall him; is that it? A. That is correct.

1022 Q. As to the other names that appear on there as signers, do you know any of them? A. No, sir; I don't think so.

Q. Now, tell us where you were when you signed that. A. That I don't know, sir. It propably was at my home.

Q. Didn't you once state some people came to your home and talked to you about signing this petition and you signed it there? A. I said probably it was my home. Now that you refresh my recollection, I said that.

Q. Well, is that the fact? A. It must be.

Q. And you stated that you signed it for some particular reason, did you? A. Yes.

Q. Tell the jury what was the reason you signed it. A. The whole reason, sir?

Q. Yes, go right ahead and give us what your reason was. A. I don't know the exact date, but somewhere around '40, about that time, there was a big case in the newspapers in the courts. A man named Earl Browder who was at that time something—general secretary or leader or the chief of the Communist Party in the United States—was under indictment for having used a passport irregularly.

1023 As I recall the facts of the case he was not accused of forging his name to the passport, he was not accused of having a false name, but as I recall he did not answer quite correctly a question on the application blank.

Q. Just to interrupt, what was the source of your facts in that connection? A. I would say the Herald-Tribune, New York Times. It was a very famous case. There were

editorials on the subject and the facts were thrown around.

The specific charge was an irregularity in the passport, I remember that. I don't know what the irregularity was.

Q. Did the people who brought this to you also represent those to be the fact? A. May I finish with the answer, sir?

The Court. He put a question.

Are you satisfied with the answer, sir?

Mr. Ford. Your Honor, he had not let him finish the answer where he says "Give all your reasons for signing it," and he was in the midst of giving his reasons.

Mr. Kelley. I don't want to hold the witness back. Let's have them all.

The Court. Well, I don't know if you want to hold him back, sir, but if it isn't important, the Court does not want to hear it.

1024 Mr. Kelley. I want it indicated that I not trying to throttle this witness, sir.

The Court. Are you satisfied with his answer, sir?

Mr. Kelley. I am satisfied.

The Court. Very well, sir, we will stop there.

By Mr. Kelley:

Q. Now, were you at one time asked whether or not you had, in addition to signing a petition for Browder as a signer, also circulated and solicited others to sign similar petitions? A. Having refreshed my recollection from the transcript of the Civil Service hearing, I find that I was asked whether I assisted my wife in circulating such petitions.

Q. My question is, did you ever circulate any? A. You are asking me now, sir?

Q. I am. A. Yes, sir, I did.

Q. How many? A. I have no recollection.

Q. What is your best recollection? A. Well, you have shown me three, so there is at least three.

Q. Well, may there be more? A. There may be four.

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Q. May there be ten? A. Not likely.

1025 Q. Well, you do have some recollection, then? A. Yes. Well, the amount of work that I would do, yes.

Q. Where did you get the blank petitions that you circulated? A. That I don't recollect. Anybody could have given them to me.

Q. You mean you have no recollection whatsoever as to how you got them? A. No. Somebody gave them to me. It may have been my wife.

Q. Well, you either remember that it was your wife or you can't remember where you got it; is that it?

Mr. Ford. Wait a minute. I object to that question. It is argumentative.

The Court. You say it may be your wife. Is that your best recollection?

The Witness. I said it may have been; yes, sir.

By Mr. Kelley:

Q. Tell us how you set out to solicit the signatures on those petitions. A. Well, I walked up the street and took a building that looked big, so I wouldn't have to do too much walking, and I went up in it.

Q. You say you guess you did. Have you any recollection of what you did? A. Until I saw those col-

1026 lections, sir, I did not even recollect having had them.

The Court. You said that, Mr. Marzani.

The Witness. Yes, sir.

The Court. The question is, now, what did you do in connection with the circulation of these petitions, if you know?

The Witness. I do not recollect, sir. I am saying what was the probable course of action I would have taken.

By Mr. Kelley:

Q. And you have presently no recollection concerning circulating them at all? A. I don't remember the place I collected them or the street.

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Q. Referring, Mr. Marzani, to Government's Exhibit 25, the one which you have testified you signed, did you read it before you signed it? A. I looked through it, yes.

Q. You satisfied yourself of its contents and meaning? A. I satisfied myself as to what it was.

Q. I will ask you to observe that the petition reads, in part,

1027 "I, the undersigned, do hereby state that I am a duly qualified voter of the political unit for which a nomination for public office is hereby made, that my place of residence is duly stated opposite my signature hereto and that I intend to support at the ensuing election, and I do hereby nominate the following-named person as a candidate for nomination for public office to be voted for at the election to be held on the 6th day of February, 1940, and that I select the name Communist Party as the name of the independent body making the nomination, and the letters C. P. in a box as the emblem of such body."

Did you understand that when you read it? A. No, sir.

Q. How did it escape you? A. Are you asking about my mental processes, sir?

Q. Whatever they were. A. I understood signing a petition to put a man on a ballot. It was shown to me as such, I understood it as such, and I understand that is the proper language for such a petition. I do not think, or at least I never regarded it as a promise to vote for a particular candidate.

Q. You mean you signed it with some mental reservations, is that it? A. No. No, sir, I did not say

1028 that.

Q. Well, if you didn't, then you signed for what it stands for, didn't you? A. No, sir, I didn't say that either.

Q. Well, perhaps you can explain it more lucidly. A. I will try again. I say that I signed the petition understanding that this petition would as a result, if successful,

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place a candidate on the ballot. I also understood that this is the proper form, legal form, whereby such a petition is executed. For example, I bought a house, I own a house. I signed a deed. There is a lot of language there. I looked through it. I am informed that this is the proper language —whereases and wherefores—I don't go and figure those things out. I signed it because that is the way a deed is done.

Q. Do you sign an oath without reading it? A. An oath is much shorter, sir, and much more important.

Q. Well, let's come to one thing more important.

I show you Government's 34-A. Have you signed an oath on that paper? A. Yes, I did.

Q. Read it. A. (Reading:)

"Carl A. Marzani, (name of witness), being duly
1029 sworn, says: I am a duly qualified voter of the State of New York and now reside in the Borough of Manhattan, City of New York, in the County of New York, in such State, at 643 East 6th Street, New York City, therein. The said residence is in the 15th Election District of the Sixth Assembly District. I was last registered for the general election in the year 1939 from 643 East 6th Street in the Borough of Manhattan, City of New York, in the County of New York, in such State. The said residence is in the 15th Election District of the Sixth Assembly District. I know each of the voters whose names are subscribed to the above sheet of the foregoing petition containing five signatures and each of them subscribed the same in my presence, and upon so subscribing declared to me that the foregoing statement, made and subscribed by him or her, was true."

Q. So that each of the persons who signed this declared to you that the foregoing statement was true; is that right? A. That is right.

Q. So, if they declared that to you and you made oath upon it, you knew specifically what it provided, didn't you? A. Excuse me, sir.

Q. Answer the question, if you can. A. Well, I cannot, the way you framed it.

1030 Q. You cannot answer that question? A. The way it is framed; no, sir.

(The pending question, as above recorded, was read by the reporter.)

Mr. Ford. I object to the part of it which says they declared that to you. That has no meaning in the question.

The Court. In view of what he just read.

You understand that, don't you?

The Witness. I understand the question, but I cannot answer as framed.

The Court. Why?

The Witness. May I say?

The Court. Yes. Why can't you?

The Witness. Because he implies that those people who signed their signature proceeded to tell me what was up there, which is not the case at all. The people would take a look at the petition, go through it, and I would say, "Does that make sense?" And I don't know if I asked something of that sort, and they would say, "Yes," and that would be the end of it.

The prosecutor framed the question in such a way as to imply that each person would go through and make that statement to me, which was not the fact. I am trying to give as closely as I can the kind of thing that happened.

The truth, the way things do happen.

1031 By Mr. Kelley:

Q. I thought you said you couldn't remember anything about what happened in these petitions. A. That isn't true either, sir.

Q. Now, what do you remember? A. I said I am trying very hard to recollect how these things happened, and I am trying to give a picture of what happened.

Q. I asked you very studiously if you had any recollection of the circumstances surrounding your circulating and soliciting signatures to these petitions. A. And I answer-

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ed that I didn't, because I do not have any recollection of the circumstances.

Q. How can you testify what you asked them or they asked you or anything about it, then? A. When you show me the petition and tell me, "Did they tell you this," then I recollect that specific question, that it wasn't so.

Q. So now your recollection is coming back without these; is that it? A. Well, you said, "Did they read that"—you said down here, "Did they run through that and make that statement to you?" And I said I didn't recollect.

You are asking me in such a way that I have to answer yes. That is why I don't like the way it is framed.

1032 Q. Let's get this certain. You do not remember anything connected with the circumstances of your circulating those petitions and obtaining signatures thereto; is that right or wrong? A. It is right, but I can make inferences too.

Q. So you are testifying now from inferences when you say that was asked and what you asked. Is it an inference or recollection? A. I am trying to remember what is likely to happen. My recollection is I don't recollect.

Q. All right. What did you do with these petitions when you had completed them?

(The witness examined the documents.)

A. I probably took them home.

Q. What do you mean "probably"? A. Well, I don't remember going anywhere else immediately with them. I notice here there is a notary public on it, and I am looking at it and trying to recollect whether I went to his office, whether the man was at my house, and I don't recollect. I say probably it was at home, because if I had gone to an office I might have remembered.

Q. That is what we want to know. Do you know that notary public? What name is listed on there? Answer that first. A. I can't read the handwriting, but under-

neath there is a stamp which says "Paul D. Sam-
1033 berg, Notary Public."

Q. Do you know him? A. I don't remember.

Q. You have no recollection of who he is? A. I don't recollect him at all, sir.

Q. Were you ever at the state headquarters of the Communist Party in New York? A. I don't remember right now.

Q. Can you testify that you didn't take these petitions to the state headquarters of the Communist Party and there make oath in front of Samberg to it? A. I can't testify to that, sir, because I don't recollect it.

Q. You may have done that? A. Very unlikely.

Q. Why do you say that? A. Because I would have remembered going to the state headquarters. That is much more sharp than going to my home.

Q. What leads you to think you would take them home? A. Well, I might meet somebody there, my wife might have looked them over. I don't know.

Q. Why would your wife want to look over your petitions? A. Because she was collecting other signatures, I understand.

1034 Q. You understand. What do you mean by that?

A. The Civil Service Commission said I did.

Mr. Ford. I object again about talking about his wife.

The Court. He has introduced it himself, sir.

By Mr. Kelley:

Q. Didn't you know then that she was?

Mr. Ford. I object. Do you mean his wife?

Mr. Kelley. Yes, I do.

Mr. Ford. I object.

The Court. In the light of the question before that, he may answer it.

Mr. Kelley. The witness has brought me back to his wife with these petitions in evidence.

By Mr. Kelley:

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Q. Didn't you know then that your wife was circulating Communist Party petitions? A. Yes, sir, I think I did.

Q. Why do you say you think you did? A. Because it is very difficult, unless there is a specific reason to remember a thing, a very sharp event, as for example, there was when I went to the Church of the Living God, something happened there which I will never forget in my whole life.

Q. Mr. Marzani, I will ask you again, did you know at that time, the date of these petitions, that your wife
1035 was also circulating like petitions?

Mr. Ford. I object, because it involves his wife.

The Court. You may answer the question.

The Witness. As I said, I think I did, yes. That was seven years ago.

By Mr. Kelley:

Q. That is your best answer, you think you did? A. That is right.

Q. That goes for each and every one of the three?

The Court. I don't understand that question.

Mr. Kelley. So far as where he took them when he got through. I am sorry.

The Court. I see.

The Witness. Yes, I think so.

By Mr. Kelley:

Q. They are not all notarized by the same notary public, are they? A. No. Two are by Mr. Samberg and one by some other name, a name I can't figure out.

Q. Didn't you swear to the truth of that affidavit in the presence of a notary public? A. Yes.

Q. Do you think he may have come to your home to take your oath? A. It is possible.

1036 Q. You say it is possible? A. Yes. I have no recollection of the specific thing, and since I didn't go somewhere else, the most likely thing to happen is that the man came to my house.

Q. Since you didn't go somewhere—are you being posi-

tive now that you didn't go to someplace else? A. I say, since I do not recollect going somewhere else.

Q. It is a process of elimination, is that it, that you can't remember any place else, so you must have gone home? A. Well, that is as close as I can come to it, after seven years.

Q. What is the name of the other notary public? A. There is no stamp with his name and the handwriting seems to be Max Kitsa or Kitses.

Q. Did you ever hear of Max Kitses? A. The name doesn't strike a chord, sir.

Q. Doesn't strike a what? A. Doesn't strike a chord of reminiscence.

Q. Now, if you circulated more petitions other than those, it is your testimony that you would have brought those home too? A. Since I don't recollect doing it, I don't know what I would have done.

Q. Did you get paid for that? A. I don't remember that either.

1037 Q. You might have? A. It is possible. It was one of the standard things on the East Side, collections for Democrats and Republicans; would pay people to collect signatures.

Q. Standard for the Communists too, was it? A. That I don't know, sir. I am not that familiar with them.

Q. You do know about the others, but you don't know about the Communists? A. No, I know that in general it was done.

Q. Now, do you recall going back to Government's Exhibit 33-X-3, 2, and 1, referring particularly to X-1, you did acknowledge an acquaintanceship with that pamphlet? A. Yes, sir. I acknowledged doing it, and being responsible for it.

Q. And you recall the testimony, do you, of Detective Drew, that each of the three exhibits that I have named were delivered by you to the home of Mary Fernandez in his presence? A. Yes, sir.

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Q. You recall at least his testimony to that effect? A. Vaguely, yes.

Q. And to the second one, you also admit an acquaintance; is that correct? A. I said I was responsible for it.

Q. And to the third one, you deny having ever
1038 seen that one; is that it? A. I don't remember seeing this at all.

Q. And that is "Rally to Free Earl Browder. Come to Madison Square Garden, Monday, September 29."

Did you attend the rally? A. I can't recall, sir. September 29—Monday? I don't know; I may very well have been in school.

Q. You might have been there? A. Well, I had one course which I have been trying to—I am confused about. It was either Monday or Tuesday night, 6 to 8.

Q. And the sole basis that you judge that you wouldn't be there is because you might have been in school? A. Oh, no, sir. But if I had been, that would settle that point.

Q. So you don't know whether you were, and you may have been; is that it? A. I may have been.

Q. Now look at the name of the petitioners on Government's Exhibit 34-A.

The first one is whom? A. It says "Leonard Guline."

Q. Do you know him? A. I don't recall, sir. I don't remember his name at all.

1039 Q. Who is the next one? A. Ross something. "Spatola."

Q. You swore down here that you knew him, didn't you? A. Yes, and I certainly did at the time.

Q. These people lived at 531 East 13th; is that right? A. That is correct.

Q. All of them A. Well, this one is either 13 or 14.

Q. It is 14.

Referring to Government's 34-B, two signatures; one on an address of 337 10th. That is about how far from your house? A. Four, five, or six blocks. Somewhere in there. I don't know where the cross section is.

Q. 236 Avenue A; how far would that be from your house? A. Avenue A was two blocks over, and it might have been a dozen blocks, one way or the other. I don't know where 236 is. In other words, Avenue A cuts this way and 6th Street is this way (indicating). It would be two blocks that way and wherever the street number would be, up or down.

Q. Look over all of the names of the signers on the petitions that you circulated and tell us whether you know any of them. A. I don't recognize any, sir.

1040 Q. But it is your testimony that you knew them at the time? A. Obviously if I put their names down.

Q. How many of them are there? A. Two, four, seven; nine. I am sorry—nine.

Q. And you have forgotten now? A. Well, I probably just met them five or ten minutes.

Q. Why do you say that? A. Well, I go up and see them and get a signature.

Q. You told me you didn't remember anything about how you circulated them. How do you know, if you stayed ten minutes or an hour? A. Maybe an hour, maybe two hours, but it is not likely that I would stay and sit an hour for somebody. It just isn't probable; that is all.

Q. Why? You knew them. A. Maybe it was two hours, if you put it that way, sure. I am trying to remember what would be most likely, under the circumstances.

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1054 *Carl Aldo Marzani,*

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Cross-Examination—Resumed

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1075 Q. Among the occasions that you visited Communist Party Section Headquarters in 44 Avenue C, were you present at a time when a lady known as Edith Charles presided at a meeting and made a talk? A. I am not sure I know who the lady is, sir.

Q. Were you ever present at that place when your wife made a talk? A. No, sir.

1076 Q. Have you ever known your wife to use the name "Edith Charles" in the Communist Party? A. Not to my knowledge, sir.

Q. Did you know her to be a member of the Party?

Mr. Ford. I object as being immaterial whether his wife is or is not.

Mr. Kelley. He testified yesterday he would go there to meet her, and any connection therewith I think is proper to be shown.

The Court. He may answer.

The Witness. Yes, sir; she was.

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Q. Were you ever present at a meeting in New York where the sheet marked Government's 33-A-1, or a facsimile, were distributed to you or to others in your presence? A. No, sir.

• • • •

Mr. Kelley.

Your Honor, this is an exhibit identified and received in evidence at the time Detective Drew testified. I would like to read it to the jury.

1077 It was temporarily received at that time, you recall.

The Court. Very well.

Mr. Kelley. It is entitled "Parade for Peace."

"Mobilize at 7th Street and Avenue A.

March to rally at Rutger's Square.

Keep the U. S. out of war.

Defeat compulsory military conscription.

Protect the foreign-born. Protest anti-alien bill.

Pass the American Youth Act. Jobs for the unemployed.

Defend democracy in America."

I am not reading it all.

"Sponsored by the East Side Youth Conference and Lower East side Peace Committee, Thursday, July 25."

By Mr. Kelley:

Q. Referring to Government's Exhibit 33-A-2, were you ever at a meeting in New York where this document or a facsimile was distributed to you or to others in your vicinity and presence (handing exhibit to witness)? A. No, sir; I don't recollect this document at all.

Mr. Kelley. If your Honor please, this is a similar document identified by the detective.

The Court. Very well.

Mr. Kelley. Entitled "Makings of a Frame-up."

An editorial from the Daily Worker, New York, Friday, July 12, 1940.

1078 At the bottom, "Read the Daily worker

New York State Committee Communist Party.

New York State Young Communists League, 35 East 12th Street, New York City."

By Mr. Kelley:

Q. Were you ever in the premises located at 35 East 12th Street, New York City?

• • • •

1079 A. I don't recall the specific address, sir, because as I understand, according to the testimony of Mr. Hewitt there, recently, there were two entrances to this building, but there was a building there, and I was there, in there.

Q. Did you know it to be the State Headquarters of the Communist Party? A. I knew it was Communist Party. I don't know state, or so on. But I was in a bookshop. I stopped there to get books I couldn't get elsewhere.

Q. But you did not know much about it? A. No.

Q. What were you doing there? A. I said to get books, books that I couldn't get elsewhere, particularly books from England.

Q. I show you what has been marked Government's Exhibit 33-A-3, and ask whether this document or a facsimile was ever distributed in your presence or to you at any meeting you ever attended in New York City (handing exhibit to witness)? A. I don't recall this document, sir.

Mr. Kelley. Again, ladies and gentlemen of the jury, I am just reading the top and the bottom. Others will be available to you.

It is entitled "Why was the Christian Front Given a Green Light?"

1080 At the bottom, in larger letters, appears "National Council of Jewish Communists, Communist Party, U.S.A., 35 East 12th Street, New York City."

And at the extreme bottom: "Read the Daily Worker and the Morning Free Light. Vote Communist in November Elections."

• • • •

Q. Among the occasions that you were present in the Communist Party Section Headquarters at 44 Avenue C, in New York, did you ever lecture on the principles of Communism, White Chauvism? A. No, sir.

Q. You say you did know Bob Appel well? A. I knew him.

Q. Did you see him frequently? A. Occasionally.

Q. Would you say he was notoriously known as the Communist Party leader of that area? A. Yes, sir.

Q. Anyone living there would necessarily know of him in that respect? A. Very likely; yes, sir.

• • • •

1081 The Court. Where did you know him?

The Witness. On the East Side. The headquarters was three blocks away from my house, sir.

By Mr. Kelley:

Q. Were you ever at 44 Avenue C when the Communist Bob Appel was there? A. Yes.

Q. Were you ever there at a time when a discussion was had concerning a march on Times Square? A. Not that I recall, sir.

Q. Did you make a speech on 14th Street and Avenue A on August 9, 1940, speaking in Italian in opposition to conscription? A. I never spoke in opposition to conscription, sir.

Q. Did anyone ever turn in to you a Communist Party book—membership book? A. Not that I recall.

1082 Q. You deny ever receiving from a Negro named Bill Easley a Communist Party Book? A. I don't remember a Negro named Bill Easley, sir.

Q. Did you ever see a Communist Party book? A. Not that I remember.

Q. Did you ever see your wife's? A. No; I know——

Mr. Ford. Wait a minute. I object. His wife is not on trial.

The Court. He has answered it, sir.

By Mr. Kelley:

Q. Were you ever present in the Section Communist Party Headquarters at 44 Avenue C when your friend, Sema Sverdlove, was also there? A. Yes, sir.

Q. On more than one occasion? A. A couple of times.

Q. Was her husband there too? A. No, sir.

Q. You never saw him? A. Not there; no, sir.

Q. Did you ever see him in the State Headquarters of the Communist Party? A. I was never there, sir, that I can recall.

Q. Were you ever at any other headquarters of the Communist Party other than 44 Avenue C? A.

1083 Not that I know myself, no, sir; not that I recall.

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Q. Did you ever, at 44 Avenue C, or at any other place, urge people to attend a meeting known as "Peace Mobilization"? A. No, sir.

Q. Were you ever present at 44 Avenue C or any place else on an occasion when Bob Appel informed others present that that was control week and that all members would have to turn in their books? A. I recall no such occasion, sir.

Q. You what? A. I recall no such occasion.

Q. Did you ever make a speech from a stepladder with reference to conscription? A. I never spoke on conscription, sir.

Q. Were you ever present at a street meeting where your wife spoke on the subject? A. Not that I remember.

Mr. Ford. I object to that as involving his wife, and she is not on trial.

The Court. It is not a question of his wife being on trial. It is a question of whether he was attending this meeting, sir.

1084 By Mr. Kelley:

Q. What was your answer? A. Not that I remember.

Q. Is your answer the same with respect to a Sid Weinstock? A. Yes. I never heard the name.

Q. Did you ever address a meeting at 44 Avenue C in the course of which you recommended to anyone present there that two members should be expelled for failure to participate in activities? A. I never spoke at a meeting at 44 Avenue C, sir.

Q. Did you ever know a person named Clem DiGracia at 44 Avenue C? A. No, sir; the name is not familiar.

Q. Did you ever at any time or place in New York City make a lecture or talk on a subject of history of the Communist Party Soviet Uuion? A. Never a lecture, sir. I may have talked about it.

Q. I mean to a group of people. A. Oh, no, sir.

Q. Did you ever make the statement, following the pas-

sage of the Conscription Act, that members of the Communist Party should endeavor, when they entered the Army, to recruit Communists from the ranks? A. No, sir. As I explained before, I have been a member of the armed services.

1085 Q. Did you or didn't you? A. No, sir.

Mr. Ford. Your Honor, may he be permitted to explain his answer?

The Court. I think that is a complete answer.

Mr. Ford. May I have an exception?

The Court. Certainly.

By Mr. Kelley:

Q. Did you ever express the hope the Communist Party would gain control of the Army? A. No, sir.

Q. Did you ever make a statement to the effect that such a plan or purpose as I have just mentioned should be kept in secrecy among the members of the Communist Party? A. No, sir.

Q. Did you ever attend the Communist Party Workers School? A. Not as I recall, sir.

Q. Did you know of it? A. Oh, yes, sir.

Q. Did you ever urge anyone to picket the premises of Congressman Edelstein in opposition to the passage of any bill? A. I don't recall, sir. There was discussion one time of picketing in regards to the anti-strike bill, but I don't recall if I specifically urged to picket the

1086 Congressman or not.

Q. The anti-strike bill was before Congress prior to June 22, of 1941, wasn't it? A. I have no recollection. I think it was, sir.

Q. After June 22, 1941, did you ever urge that no strikes should be undertaken? A. I have always urged the right to strike to maintain certain——

Q. Just a moment. I want you to answer my question. A. I don't recollect urging that no strikes be undertaken, sir.

• • • •

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Q. Now, you have stated that there were occasions when you saw Sema Sverdlove, whom you have stated to be along with her husband, an intimate friend.

• • • •

1087 Q. And I will ask you whether on one of the occaisons you saw her at the Communist Section Headquarters you participated with her in folding, sorting, or otherwise handling of leaflets? A. Not that I recall, sir.

Q. Or in a discussion of the moving picture "The Great Dictator" with her at that place? A. I don't recall that either, I am sorry to say.

Q. Did you ever make the statement to anyone, while you were at 44 Avenue C, that you were responsible for your wife becoming a Communist? A. Oh, no, sir.

Mr. Ford. Wait a minute. I object to that as again injecting his wife into the case.

May I have an exception?

Mr. Kelley. The testimony is in the record.

The Court. He has answered the question, Mr. Ford, as your witness has done repeatedly, sir, before the question is completed.

The Witness. I am sorry. I am certainly going to watch that.

Mr. Ford. At this time I am going to advise the
1088 Government that I will object to any question involving his wife.

Mr. Kelley. Now, if the Court please,—

The Court. I will not rule on it at the present time, sir, but as the question is put.

Mr. Kelley. All right, sir.

By Mr. Kelley:

Q. Did you ever attend a meeting in the home of Joseph Lopez, located at 220 Avenue A, Apartment 6, rear of the house? A. No, sir.

Q. Do you know such a person? A. I don't recollect such a name.

Q. Did you know a person named Joseph Fernandez Lopez? A. No.

Q. Did you ever distribute tickets at any meeting to the Soviet film entiled "The Great Beginning"? A. Not that I recollect, sir.

Q. You might have? A. I don't think so.

Q. You don't think so?

Did you ever make a report to anyone concerning sales of the Daily or Sunday Worker? A. No, sir.

Q. Do you admit or deny having anything to do with the sales of the Daily or Sunday Worker? A.
1089 Sometimes I would walk with my wife when she had a couple of the Sunday or Daily Workers, and sometimes she sold them, but I don't remember the specific dates, circumstances, or anything of that sort. I know that she did do it.

Q. But you never made a report on the sales? A. Not that I remember; no.

Q. Did you ever announce to anybody that a group with which you were connected was in competition with some other group in connection with sales of the Daily Worker? A. No, sir.

Q. Did you ever make the statement to anyone in 44 Avenue C, by way of announcing a public meeting to be sponsored by the Tompkins Square Peace Council, an affiliate of the American Peace Mobilization? A. No, sir.

Q. I show you what has been marked in evidence Exhibit 33-N-1.

Were you ever at a meeting in New York where this document or a facsimile was distributed either to you or to other people in your presence?

• • • •

1090 A. Since I don't recollect the document, sir, I can't recollect the meeting.

• • • •

PLEASE THROUGH - POOR COPY

1091 Q. I show you what has been marked Government's Exhibit 33-N-2 and ask you whether or not you ever attended a meeting at which that document or a facsimile was distributed in your presence or to you. A. Not that I recollect, sir.

Mr. Kelley. If the Court please, as to each of these exhibits, I would like to read a portion to the jury.

The Court. Very well, sir.

Mr. Kelley. Reading now from 33-N-2, on the fly leaf are the words:

"Are You Prepared?"

And on the lower part of the back, "American Peace Mobilization, New York Council, 381 Fourth Avenue, New York City."

By Mr. Kelley:

Q. How far did you live from 381 Fourth Avenue, New York City? A. I don't know where 381 is, sir, but I lived about five or six or more, I guess seven blocks to Fourth Avenue, and 381, whether it was uptown or downtown——

Q. You haven't any idea? A. No. I know that the lower hundreds are sort of below 42nd Street, but I don't know what street they are at.

Mr. Kelley. And in connection with Government's Exhibit 33-N-1, it says:

1092 "Women of the East Side, how can you protect your families under the Draft Law?"

"Men of the East Side, what exemptions can you claim under the Draft Law?"

"People of the East Side, what can you do to keep America at peace?"

"Questions on the draft answered at a public meeting at Hennington Hall, 214 East 2nd Street, Thursday, December 12, at 8 p. m."

Down at the bottom it says:

"Sponsored by the Tompkins Square Peace Council."

By Mr. Kelley:

Q. Were you ever in Hennington Hall? A. There were a lot of halls on the East Side. I may have been in that one. There were dances regularly, sir.

Q. Speaking of dances, did you attend a social affair at 143 Suffolk Street which was put on by the East Side Branch of the National Negro Congress? A. I have a recollection, sir——

Q. Did you attend such a meeting or dance? A. I think I did attend a dance. I don't know whether——

Q. Were you there introduced to a Negro by the name of Bill Easley, and were you introduced then by the name "Tony Whales"? A. I don't recollect a Negro
1093 Bill Easley, and I never used the name "Tony Whales."

Q. Did anyone there introduce you there at that time by the name "Tony Whales"? A. Not that I know, sir.

Q. Did you know a person named "Harry Daniels"? A. The name is not familiar, sir. I don't recollect it.

Q. Were you aware at the time of the fact that the 6th A. D. Communist Party Section changed its headquarters from 44 Avenue C to a place located as 67 Clinton Street? A. I don't recall hearing about it, sir.

Q. Did you ever know a Negro by the name of Bill Johnson? A. No, sir.

• • • •

Q. I show you what has been marked Government's Exhibit 33-R-1 and ask you whether or not that document or a facsimile was ever distributed in your presence or to you. A. Not that I recall, sir. I don't recall the document either.

Q. Did you ever attend any mass rallies advertised for the purpose of freeing Earl Browder? A. I
1094 don't recall. I may have.

Q. In connection with your views concerning Earl Browder, did you believe what is stated at the top of this exhibit?

• • • •

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Did you believe that the ruling against Browder was a war-dictatorship move? A. Oh, no, sir. I thought it was a civil liberties affair.

Mr. Kelley. May it please the Court, I would like to read some additional matter that I have not referred to the jury.

The Court. Very well.

Mr. Kelley. At the bottom of R-1, the notation,

"Issued by the New York State Committee Communist Party, 35 East 12th Street, New York City."

"Read the Daily and Sunday Worker."

By Mr. Kelley:

Q. Now, as to Government's Exhibit 33-T-1, was that document or a facsimile ever distributed to you or to others in your presence? A. Not that I recall, sir.

1095 I don't recollect the document.

Mr. Kelley. And this one recites at the top:

"Call American People's Committee, New York City, April 5-6, 1941."

"To all friends of peace and liberty."

On the back is a registration blank and an endorser's blank.

"Please mail immediately to the national office, American Peace Mobilization, 1133 Broadway, New York City."

By Mr. Kelley:

Q. Do I understand it to be your testimony that until some time in connection with the trial of this case you never knew or saw Detective Archer Drew? A. I have been trying to recollect him, and I can't place him, sir.

Q. And is your answer the same as to George Hewitt? A. That is correct, sir.

• • • •

1117 The Court. Ladies and gentlemen, in the interval it has been stipulated and agreed by counsel for the defendant and counsel for the Government that Mr. Mar-

zani's testimony, insofar as the Tokyo situation is concerned, may be understood as follows:

That the defendant was requested to prepare and did prepare certain maps and data relating to aerial targets in Tokyo, but it is not contended by the defendant that the targets chosen were bombed by Doolittle's flyers. They may or may not have been bombed by the flyers.

• • • •

1124 Mr. Ford. Now, in general, I would like your Honor to instruct the jury in substance in the following matters:

Discussion of Prayers

• • • •

1125 Mr. Ford. Three, charge the jury in substance on the following topic: that if they find from the evidence that the defendant only knew some members of the Communist Party and associated with them, that that is not enough on which to predicate a finding of guilt on the charges of the indictment.

1126 Four, that if the jury finds from the evidence that the defendant visited places where Communists had their offices, they cannot from this fact alone infer that he was a member of the Communist Party or engaged in any activities therefor or contributed therefor.

Five, if the jury believes from the evidence that the defendant participated in meetings of the National Negro Congress, and the East Side Conference to Defend America—Crush Hitler, and spoke thereat, and distributed leaflets thereat, even though Communists may have been present thereat, they must find him not guilty.

• • • •

1133 Mr. Kelley. As point 3 for instructions, hastily stated it is my understanding that the defendant

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urges an instruction to the effect that if the jury found that the defendant knew certain or some members of the Communist Party and associated with them, those facts

1134 alone would not be sufficient to warrant a conviction.

I lump with that the next point, that if they found he visited Communist Party offices, that fact alone would not be sufficient, and the following point that if they found he participated in activities of the National Negro Congress, etc.

Those three requests fall into the category of those very frequently condemned by the courts, in asking a trial judge to select specific items and say, "This alone would not be sufficient." The true rule, as enunciated from time immemorial, the rule that is held adequate and sufficient is to charge the jury that upon all the evidence they must find, and so forth. It is prejudicial to do it otherwise because is casts upon such selected items intemperate inferences and possibly could lead to the conclusion that the judge himself finds it of no probative value.

• • • •

1146 The Court. What I usually have done is to take the affirmative rather than the negative of these, and make the necessary ingredients—proof beyond a reasonable doubt—the test, with a statement to the effect that if the Government fails to sustain its burden as to each of the material elements, then of course their verdict must be not guilty, rather than taking the negative.

But I will consider everything that you have here.

EXHIBITS

Govt 20
Washington, D. C.
July 29, 1942

Statement of CARL ALDO MARZANI made in the presence of Special Agent R. F. RYAN and stenographer KATHLEEN LOFTUS of the Federal Bureau of Investigation.

Questions by Agent RYAN:

Q. The Federal Bureau of Investigation was empowered by the 77th Congress of the United States, under Public Law 135, to investigate the employees of the Federal Government who are alleged members of subversive organizations, or who advocate the overthrow of the Federal Government, and make a report to Congress. The purpose of this interview is to allow you an opportunity to answer questions concerning information which has been received by the FBI about alleged activities on your part. The questions I am about to ask you may be answered, if you so desire, and you will be given an opportunity to make any statement of your own which you feel will fairly present your side of the question. A copy of the report of the investigation, incorporating your statement, will be furnished to the agency which employs you. Do you have any objection to making this statement under oath? A. No. Will I be furnished a copy of the transcript?

Q. Yes, you may have a copy.

Would you raise your right hand, please. Do you solenly swear that you will tell the truth, the whole truth and nothing but the truth, so help you God? A. I do.

Q. Will you state your full name, please. A. Carl Aldo Marzani.

Q. Where do you live? A. Vienna, Virginia.

Q. Where are you employed? A. Office of Strategic Services.

Q. In what capacity? A. Economic Editor.

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Q. Mr. Marzani, are you now or have you ever been a member of the Communist Party? A. No.

Q. Have you ever attended any meetings of the Communist Party? A. No.

Q. Have you ever contributed any money to the Communist Party? A. No.

Q. Have you ever contributed any services to the Communist Party? A. No.

Q. Have you ever participated in any of the activities of the Communist Party? A. No.

Q. Have you ever signed any Communist Party election petitions? A. Yes.

Q. When and where did you sign those petitions? A. A couple of years ago, perhaps.

Q. Where did you sign the petitions? A. In New York.

Q. What were the circumstances of your signing those petitions? A. Oh, I don't recall—the petitions went around and it was signed. I guess someone came to the house.

Q. Did you know what you were signing? A. Yes, I signed the petition presented to me for the purpose of running Earl Browder as a Congressman at the time when, I believe, it was presented to me as a defense of civil liberties, as Mr. Browder had been given an unduly long sentence.

Q. Have you ever lived at 643 East 6th Street, New York City? A. Yes.

Q. At this time, you may have the opportunity of making any statement of your own which you think is pertinent to this inquiry. A. I have none.

Q. Mr. Marzani, would you care to return to read and sign the statement? A. I don't think that will be necessary.

January 15, 1947

I hereby certify that the above and foregoing interrogation, consisting of three pages, is a correct transcription

of the stenographic notes taken by me during the interrogation of CARL ALDO MARZANI by SPECIAL AGENT R. F. RYAN, Federal Bureau of Investigation, on January 29, 1942, at Washington, D. C., save and except that the last question and answer appearing on the third page thereof were not noted in shorthand but were added to the transcription in keeping with regulations and customs then in force.

KATHLEEN (LOFTUS) NIXON

• • • •

160 *Exhibit 22*

"Report of Special Hearing

Carl Aldo Marzani, c/o Mr. Hugh C. Barton, Route #3, Vienna, Virginia.

Applicant for the position of Economic Editor, Office of Coordinator of Information (Investigation at their request), E. O. 8564.

Special hearing conducted November 23, 1942, in room 517 Mather Building.

Special hearing conducted by Charles N. Keating, Sr., Investigator.

Witnessed by: John H. Finlator, Jr. Investigator

Stenographer: Selma S. Newman.

Mr. Keating: In the course of investigation as to your character and qualifications for the position of Economic Editor, a number of matters were revealed which were either discrepant, or misleading or which might reflect on your character, loyalty or qualifications for em-

161 ployment in this position.

It is an established policy of the United States Civil Service Commission that these matters be brought to your attention, affording you opportunity to present such answers or explanations you wish to make. Such answers or explanations will be included as a part of the report made on your case so that the Commission will have them for consideration in arriving at a decision.

I should like to present these matters to you at this time. It is the practice of the Commission to receive your statement or explanation under oath. Do you have any objection to taking an oath? A. No.

(Whereupon,

CARL ALDO MARZANI

was duly sworn and stated as follows:)

Q. What is your full name and present address? A. Carl Aldo Marzani, Vienna, Virginia.

• • • •

183 Q. Are you now or have you been a member of the Communist Party? A. No.

Q. Have you ever attended meetings of the Communist Party? A. I don't think so.

Q. Have you ever belonged to any organization which was affiliated with the Communist Party? A. No.

Q. Have you ever used the name of Tony Whales? A. No.

Q. Have you ever used a name similar to that? A. No.

Q. Has your wife ever used the name of Edith Charles? A. No, as far as I know.

Q. The Commission has received information to the effect that you were a section organizer for the Communist Party on the East Side in New York City under the name of Tony Whales. What comment do you have to

184 make? A. The answer is no.

Q. The Commission has received information to the effect that you made speeches against the conscription bill, is that information correct? A. No.

Q. Have you ever signed a nominating petition for the Communist Party? A. I could have. Yes, I think I could have.

Q. Well, have you? A. Well, the answer I give you is, the FBI brought to my attention the fact that they thought

I had, I couldn't recall, but I don't recall any specific instance, it could be yes.

Q. (Handing a photostat copy of a Communist nominating petition to Mr. Marzani). I will hand you Exhibit A which is a photostatic copy of a nominating petition for the Communist Party to which your name is purportedly signed on January 19, 1940, and I will ask you if that is your signature. A. Yes, it is.

Q. Do you now recall signing it? A. I don't recall—well, yes, I do, as a matter of fact, now that I see the date.

It was early 1940, I don't remember the day, but I
185 remember there was occasion to sign the petition at that time.

Q. What were the circumstances surrounding this petition being presented to you for signature? A. I think it was a campaign to elect Mr. Browder."

Mr. Ford. Then there is a "g".

Mr. Kelley. The last sheet.

Mr. Ford. I will read the complete answer:

"I think it was a campaign to elect Mr. Browder. In fact, I recollect the occasion now. Mr. Browder had just been sentenced to what I considered an unduly harsh sentence in view of the offense committed. It seemed to me a clear case of civil liberties. I may add that the sentence was later commuted by Presidential order, I believe on grounds of undue harshness."

Mr. Kelley. At the top of page 14, now:

"Q. You were aware of that at the time, were you? A. Yes.

Q. Did you read the petition before signing it? A. Not too carefully, but I knew what I was signing.

Q. Among other things contained in that petition is the statement that you intend to support the candidates of the Communist Party. Did you intend at the time to give active support to the Communist Party candidates? A. I don't recall my intentions at the moment. I—what

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I meant to accomplish by signing my name was to
186 nominate them.

Q. Have you signed any other Communist petitions? A. Not that I can recollect.

• • • •

Government Exhibit No. 30

Govt 30 (2 pages)

BOARD OF APPEALS AND REVIEW

Hearing in the case of

MR. CARL ALDO MARZANI

held on

April 20, 1943

• • • •

After having been first duly sworn, Carl Aldo Marzani, on April 20, 1943, in the City of Washington, District of Columbia, in response to the following questions propounded by J. F. Edwards, Chairman, Board of Appeals and Review, Civil Service Commission, made the following answers:

• • • •

Mr. Edwards: The statement is made here that "Mr. Marzani is known with the Communist Party as Tony Whales". Anybody ever call you "Tony"?

Mr. Marzani: Not Tony Whales—Tony, probably. I have never heard that name, sir. After the thing was asked me at the interview I chewed it over quite a bit. I said—I wonder where the basis for that sort of thing came from. And the use of the name "Tony", I probably have been called "Tony"—not because it is my name but because it is a very common Italian name. I have been

called lots of names. I have wondered if there is a Communist who is known as Tony Whales and if somebody upon hearing me being called "Tony" may have attached some significance—but I don't know.

Mr. Edwards: The next thing is that you made speeches against the Conscription bill.

Mr. Marzani: What can I do except say that it is absolutely false.

Mr. Edwards: So your statement is that you never opposed the Selective Service legislation when it was in Congress?

Mr. Marzani: That is right.

• • • •

1 Govt 30a (5 pages)

Government Exhibit 30a

Portions of the Testimony of the Defendant Carl Aldo Marzani Given at a Hearing Before the Board of Appeals and Review, Civil Service Commission on April 20, 1943, Washington, D. C.

• • • •

(Part of Question by Mr. Edwards appearing on Page 30.)

Mr. Edwards: "• • • You signed a Communist nominating petition apparently in January 1940. That was while you were at W. P. A., I judge.

Mr. Marzani: Yes, sir.

(Question by Mr. Edwards appearing on Page 30.)

Mr. Edwards: And, of course, that petition was in favor of Earl Browder who was at that time candidate for President, I believe. You might just give us your reason why you would sign a nominating petition for a Communist candidate.

Mr. Marzani: As you probably know, they were canvassing from door to door asking people to sign petitions.

I signed it knowing quite well what I was doing and the reasons were those which were adduced by the people canvassing. Primarily, it was found out that Browder had been sentenced to jail for four years on the basis that his passport had not been properly made out. It was pointed out to me that the sentence was unduly harsh for the offense. The person who came around had lists showing what similar penalties for similar offenses were, and so-on. The thing was presented to me on an issue of a civil liberty and the opportunity of Mr. Browder—his case was on appeal at that time to the Supreme Court which disallowed the charge, or disallowed the appeal, and it was pointed out if he was nominated—if he could get on a ballot—it would have a substantial effect on this and I signed primarily for that reason.

(Question by Mr. Edwards appearing on Page 33.)

Mr. Edwards: In addition to the signing of the nominating petition for Mr. Browder, our record indicates that you solicited other signers—I think. At least three, the record says. Do you recall that?

Mr. Marzani: No, sir. And what is the nature of the record may I ask?

Mr. Edwards: The statement is: "Mr. Marzani signed a Communist petition on January 19, 1940, and official records indicate that he was a witness to three other Communist petitions. Being a witness to a Communist petition implies having solicited others to sign the petition." Remember being a witness?

Mr. Marzani: No, I don't.

Mr. Edwards: The only statement here that I see is that the official records indicate that. I don't seem to have the documents, as we do in the case of signing the petition, that you were a witness to the others, just as Mr. Cooper was a witness to the one that you signed. You don't have any recollection of having solicited others to sign petitions?

Mr. Marzani: No, I haven't.

Mr. Edwards: Nor witnessing any other petitions?

Mr. Marzani: Not to my recollection.

(Question of Mr. Edwards appearing on Page 34.)

Mr. Edwards: At the same time you were on W. P. A., your wife was there, and I believe they subsequently suspended or dismissed her because of her activities in securing signers to Communist nominating petitions. Of course, that is not something we are charging up to you except under the general sense of some one being very close to you being engaged in that kind of activity. Were you aware of her activities in this connection?

Mr. Marzani: I knew that she had done this, sir.

(Question of Mr. Edwards appearing on Page 34.)

Mr. Edwards: Did you encourage her in procuring signatures, discourage her, or remain absolutely neutral?

Mr. Marzani: My wife is a person of very well defined personality, you might say, and I remained neutral. It is my impression she was paid for getting signatures, which, incidentally, is a practice followed by the Democratic and Republican Parties on the East Side, and, I imagine, elsewhere.

(Question of Mr. Edwards appearing on Page 34.)

Mr. Edwards: Yes, I suppose she was paid a certain amount. I don't know what but, but of course, the inference there would be whether, if you were willing for her to work for pay in order to advance the cause of the Party which was considered inimical to the Government, you wolud be just as blameworthy.

Mr. Marzani: May I point out—there is where I always get into trouble because I have some very strong feelings. I really do. I mean, I am being as fair and open as I can. I think the Communists, or the Fascists, or anybody with an idea, should be on the ballot and if the people don't like them they can vote them down. In England, you know, the practice is that anybody can be a candidate for office simply by putting up $100, or something

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like that. Now, we are getting into political theory here. I felt that all very strongly and, you know, I can only honestly say it has no real significance to any particular party. Now, there it is.

4 (Question of Mr. Edwards appearing on page 34.)

Mr. Edwards: You would admit that you had helped the party that you thought was inimical to our form of Government, wouldn't you?

Mr. Marzani: No, I would not, and I don't consider it help to the Party. I consider it help to the system of American form of Government. I said so by signing a petition for Browder. I wasn't kidding about that either or making it up. The fact remains that—you know—democracy has nothing to fear from anybody except from itself. If we are afraid, if we have to give Mr. Browder four years, if we can't get him for anything else other than signing the wrong passport, then something is wrong. The President of the United States pardoned him after a certain amount of time and on the basis—strictly on the nature of the sentenec that as such it was contrary to democratic interests. I think that is true and we always come back upon that matter, you know. Garfield Hays, head of Civil Liberties, inferred that in some famous case and was violently attacked. He said, "I don't want to have anything to do with Fascists, I have no sympathies with them, and I think Fascism should not be allowed to grow, but", he said, "if we want to get the Fascists because we think they are wrong, let's get them for a specific reason." I think it is ethically wrong to get Al Capone because he didn't pay his income tax. If the laws have loop holes, let's correct them. Let's get him for what he was doing. Now, you see, we are reaching—what shall I say—an ultimatum series of beliefs. The only thing I can say is that I think I am democratic.

Mr. Edwards: Well, you might not be in agreement on the opinion of Al Capone.

Mr. Marzani: I want him in jail—don't misunderstand me. I want him in jail permanently, but let's put him in for what he did—not income tax evasion.

• • • •

Stipulation

It is hereby stipulated by and between counsel for the defendant and counsel of record for the government in this case that in requesting instructions, defendant asked the Court to charge the jury as respects character evidence in accordance with the principles enunciated in the case of *Egan v. U. S.* 52 A. D. C. 958, 287 F 968 (1923).

ALLAN R. ROSENBERG,
Counsel for the Defendant

JOHN M. KELLEY, JR.,
Special Assistant to the Attorney General of the United States

September 4, 1947

• • • •

401 GEORGE HEWITT

was called as a witness for and on behalf of the United States.

DIRECT EXAMINATION

By Mr. Kelley:

Q. State your full name. A. George Hewitt.

Q. Will you state your age. A. I am 41 years old.

• • • •

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Q. Are you presently a member of the Communist Party? A. No, I am not.

Q. Were you ever a member of the Communist Party? A. I have been a member for 18 years.

Q. Starting when? A. About 1927.

402 Q. When did you cease to be a member of the Party? A. About 1944.

Q. While you were a member of the Communist Party did you make a trip to Russia? A. I did.

Q. What did you do there? A. I was sent there——

• • • •

A. I was sent to the Soviet Union in the year of 1930 where I remained—I was supposed to stay there four years, but the course was cut in two.

I was sent to the International Lenin School, in which I met about 40 other Negro students and about 60 other white students from the United States.

The purpose of the journey to Russia to this school was to indoctrinate us with the definite purpose of learning espionage; to become professional revolutionists; to learn theory that would ultimately lead to the overthrow of the United States Government.

403 Q. How long did you remain in Moscow? A. I was there two years; a little over.

Q. Will you fix the date as closely as you can of your return to this country? A. That was about 1933, or the latter part of 1932.

Q. On your return to this country, what was your gainful livelihood? A. I at first was asked to go to the State of Louisiana as an organizer.

Mr. Ford. I object to this as all being irrelevant.

Mr. Kelley. The Government is laying a predicate, your Honor, which I will tie up and establish in connection with the defendant and his knowledge of the defendant.

The Court. I will allow it.

Mr. Ford. May I have an exception?

• • • •

Q. What was your gainful occupation upon your return to the United States from Russia? A. I was asked by the national officials of the Communist Party to go
404 to the State of Louisiana as what they call a district organizer.

Q. From what source did you receive funds upon which you lived? A. From the Communist Party.

• • • •

Q. My question was, how long did you make your livelihood and live by virtue of money furnished you by the Communist Party? A. From the time I came back until I left.

Q. State whether or not in your capacity as a member of the Communist Party in 1940, you were a teacher at the Workers' School in New York City. A. That is right.

Q. You say your name is George Hewitt? A. I was known as Timothy Holmes.

Q. In what way were you known as Timothy Holmes and under what circumstances? A. As organizer and teacher.

Q. What is your real name? A. George Hewitt.

Q. Did you adopt the name Tim Holmes for Communist Party purposes? A. I had several names.

405 Q. Was that the purpose of that name, Tim Holmes? A. The purpose of that name was to conceal my real one.

Q. Did you teach a course in the Workers' School under the name Tim Holmes? A. I did.

Q. By whom was the Workers' School operated? A. By the Communist Party.

Q. State whether or not among the students whom you taught in 1940 at the Workers' School there was a Negro by the name of Bill Easley. A. Yes, he was a student in my class.

Q. You had a student that you knew by that name, Bill Easley? A. That is right.

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Q. Have you come to know that individual since by any other name? A. As Mr. Drew.

• • • •

Q. Did you come to know the man Drew as a detective with the New York Police Force? A. I didn't know him as a detective then, but I knew him as Beasley.

Q. Are you acquainted with the defendant in this
406 case, Carl Aldo Marzani? A. I knew Mr. Marzani as Tony Whales.

Q. Give us the time as approximately as you can and the place, when you met him, and who introduced you. A. Mr. Beasley, while a student in my class at the Workers' School, enticed me to come to his section, a part of the city known around 14th Street and Avenue C, in order to clarify the comrades on their bad development on Negro work.

That was what I specialized in, and as a result of going to this meeting that Mr. Beasley arranged, I was introduced to Mr. Tony—Mr. Whales.

Q. At the time of the introduction was anything said descriptive of Tony Whales in respect to Tony Whales' connection with the Party?

• • • •

Q. Was there a conversation connected with your introduction? A. Yes, sir.

Q. In the course of that conversation was any reference made to any office or position held by Mr. Marzani when you were introduced to him?

407 • • • •

By Mr. Kelley:

Q. All right. Relate in full the conversation you had at the time you were introduced to this defendant under the name of Tony Whales by the man Bill Easley. A. I was merely introduced to Mr. Whales and he was intro-

duced to me as the Educational Director of the section of the Communist Party.

Q. When did you first come to know this defendant by the name of Marzani?

• • • •

The Witness. Roughly about the year 1940, 1941. Possibly the latter part.

By Mr. Kelley:

Q. Of what? A. Of '40, or the beginning of '41. I am not sure about the exact date.

408 Q. Now, when did you first come to know the defendant whom you first met as Tony Whales under the name Marzani? A. In the recent newspaper clippings in New York City.

Q. By recent, you mean when?

• • • •

The Witness. No, I mean I recognized the picture of this man as Tony Whales, but it was stated he was Marzani in the papers.

That happened about six months ago, or four or five months ago, when the case first started.

By Mr. Kelley:

Q. In other words, you did not know the individual who sits at this table, to whom you were introduced under the name Tony Whales, by the name of Marzani until some time this year? A. That is right.

Q. State whether or not you ever met and talked with this defendant at the New York State Communist Party Headquarters. A. Well, in the capacity of Educational Director, I believe at that time he was pinch-hitting——

409 Mr. Ford (interposing). I object to it as not being responsive. He asked him if he ever spoke to him, and he says yes or no.

The Court. Did you speak to him, sir?

The Witness. Yes, sir.

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Mr. Ford. May we have the time, your Honor?

The Witness. At the State Headquarters of the Communist Party.

The Court. And when?

The Witness. In the process of educational work in which those organized to do educational work came to make certain reports.

The Court. Do you know the time?

The Witness. Shortly after the meeting of the center. The center was the first time, the local center.

By Mr. Kelley:

Q. What do you speak of when you refer to the center? A. The place where I spoke on this Negro question.

Q. Now, can you locate that for us in the City of New York? A. It was on Avenue C.

Q. Do you remember the number? A. The number I I don't remember, but I do know that I only spoke at three meetings in that entire neighborhood.

Q. Would you be able to point out the area where
410 you met this defendant and spoke, if you had a map of that area? A. I believe so.

• • • •

411 Mr. Kelley. Mr. Clerk, would you mark this Government's map No. 1?

• • • •

Mr. Kelley. I will just tack it on the blackboard here in view of the jury.

The Court. Very well.

• • • •

Q. Mr. Hewitt, will you take this pointer and indicate to the Court and jury as closely as you can the location of the place where you first made the acquaintance of
412 defendant?

• • • •

The Witness. I remember coming down from Fourteenth Street and went to Avenue C.

It was somewhere around in this vicinity (indicating).

• • • •

The Court. What does the map indicate, sir? You said in the vicinity of what?

The Witness. In the vicinity of this area (indicating). I see Avenue E here, but there is no Avenue C.

413 Mr. Kelley. Well, will you look at the map, please, and see all the symbols on the map?

The Witness. Well, here is Avenue C (indicating). I see Avenue C here. This is Avenue C (indicating).

• • • •

The Witness. This is Fourteenth Street here and I walked to Avenue C here in this location, and then I came down to about around here (indicating), around Eighth and Ninth.

414 By Mr. Kelley:

Q. Now, you are pointing to a juncture of what? A. Around Tenth and Avenue C, if I am not mistaken.

• • • •

Q. Would you state as accurately as you can the last time that you saw and talked with this defendant while he was still a member of the Communist Party? A. Roughly around—first with the meeting in which I was introduced; secondly,—

Mr. Ford. Wait a minute. I object. He was asked to state the last time.

The Court. Yes.

The Witness. All right; the second time and the last time was the time with the educational organizers' meeting in which they came there to be instructed.

By Mr. Kelley:

Q. Where was that meeting? A. At the State Headquarters of the Communist Party.

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Q. Where was that located? A. 35 East 12th Street.

415 *Cross-Examination*

By Mr. Ford:

Q. Give us the date. A. The day I don't remember.

Q. The date. A. Roughly 1940 or '41.

Q. What do you mean by "roughly 1940 or '41"? A. In that period of time.

Q. Can you give us the month? A. No, I don't believe I could remember the month.

Q. Can you give us the season of the year? A. Well, I think it was in the fall. I was wearing a topcoat, if I can recall.

Q. If it was in the fall, it wouldn't be the first of 1941, would it? You mean the fall of 1940 or the fall of 1941? A. No, 1940. The latter part of 1940.

Q. Have you got any idea whether it was in December, October, or November? A. It would be any one of those three months.

Q. Could it be any other month other than those three months in that same year? A. No. It was the latter part of that year.

Q. It could not be any other month. Correct? A. Yes.

416 Q. What time of day was it? A. It was usually with those organization meetings—

Q. No, wait a minute. What time of day was it that you had this meeting; this particular one? In '40 or '41, or in the fall. This is the meeting I am talking about.

The Court. Is this the first meeting?

Mr. Ford. No, your Honor; the last time he saw him.

The Witness. I would say they had meetings of that nature around——

Mr. Ford. I move that that be stricken.

The Witness. Yes, in relation to all meetings.

Mr. Ford. You Honor, I move that that be stricken out of the answer.

I am asking what the time of day was of this last meeting.

The Court. Do you know what time of day it was?

The Witness. About five to five-thirty.

By Mr. Ford:

Q. In the eevning? A. Yes, sir.

Q. Who was with you when you went to this place? Give me the names of anyone who was with you. A. Are you referring to the meeting of the State Headquarters or the meeting of the Local?

Q. I am speaking of the meeting when you said you last saw the gentleman who sits here, and which you said
417 was some time in the latter part of '40 or the beginning of '41, of the month you don't know; I am talking about that same time we have been talking about for five minutes.

• • • •

The Witness. We had men like Isadore Beacon.

By Mr. Ford:

Q. Was he with you? A. He was a member, of the state leader type.

Q. Who was with you when you went to that meeting about five-thirty? A. Isadore Beacon, Israel Ampter, Charles Crumbin, Rose Wurtis.

Those constituted the bureau of the state apparatus.

Q. And were they all with you when you went to this meeting at five-thirty, the people you have just repeated? A. They were there when I went in.

Q. My question is, who was with you when you went there? Not who was there after you got there. A. I went myself to the meeting.

Q. And where had you come from? A. From upstairs. It was in the same building.

418 Q. Had you been there all day? A. I was a full-time functionary.

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Q. My question is, were you there all day? A. In my office; yes.

Q. Now, I understood you to say that you identify this defendant by a picture you saw in the newspaper; is that right? A. That is right.

Q. Now, when was it that you saw that picture? Give me the date when you saw that picture by which you say you identify him. A. Let us see. I think it was about three months ago.

Q. Did you say before that it was about six months ago? A. Did I?

Q. Yes, when you were—— A. It could be.

Q. Wait a minute. When you were answering Mr. Kelley's questions, didn't you say to him that it was six months ago? A. It is possible I said that.

Q. Now, do you consider in your testimony here that testifying about what happened six months ago and——

The Court. He said about six months, Mr. Ford. His testimony was about that.

Mr. Ford. I understood that my question could
419 be reasonably interpreted that I am not limiting to a day counting six months ago, but the same impression six months ago and three months ago. I mean to use it the same way be used it, your Honor.

The Court. In other words, he said about six months.

By Mr. Ford:

Q. Do you consider about six months the same as three months ago? A. Not necessarily.

Q. Now, which was it? Was it three months ago or was it six months ago, and when you say you saw his picture in the paper? A. It was between the two.

Q. So it was four or five months ago, was it? A. Possibly.

Q. Therefore it wasn't about three months ago, and it wasn't about six months ago, but it was——

* * * *

420 By Mr. Ford:

Q. Now, when you say between three and six months, do you mean to say that it was not three months and it was not six months?

Mr. Kelley. Same objection.

The Court. He does not know, Mr. Ford, according
421 to his testimony. He said between three and six.

Can you fix it any closer?

The Witness. I mean at the time when this picture first appeared.

The Court. That is right, but his question is, can you fix it any closer than three or six months.

The Witness. No. I never followed the thing——

The Court. You have answered the question.

By Mr. Ford:

Q. Now, my question is, could it have been two months? A. I will have to give you the same answer, Mr. Ford.

Q. Was it yesterday? A. The same answer.

The Court. You need not answer that, sir.

* * * *

422 Q. Now, what was the name of the paper it was in? Was it a newspaper? A. It was several clippings in the World-Tele, I believe.

Q. Now, by the World-Tele, do you mean the World-Telegram of New York? A. That is right. I believe one was the American Journal.

Q. The New York Journal? A. That is right.

Q. Now, which one of those was the one that you used to identify him? The one in the Telegram or the one in the Journal? A. Well, both. The features of the man struck me when I saw both of the papers. I read both of the papers.

Q. Now, which one did you look at first? A.
423 Well, I usually look at the World before I look at the Journal.

Q. Did you see it in there first? A. I believe so, at the time.

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Q. Now, can you give us the date when it was? A. No, I have the clippings at home. I clipped them out.

Q. My question is, can you give me the date when it was? A. No, I couldn't give you the exact date.

Q. When was the first time you say you met him? A. At Avenue C in this meeting, on a Sunday, I believe.

Q. Yes. When? I am talking about the time. A. About 1940.

Q. And was there any other times other than two, either between three and six months ago and seven years ago that you have seen him, other than those two that you have identified? A. Yes, I saw him, not to speak to. I saw him passing by.

Q. On the street? A. On the street, going to the Italian Workers' Center at one time. A sort of a place where all Communists went.

Q. Did only Italian workers go there? A. Yes, but the group there was controlled completely by Communists.

424 Mr. Ford. I move that that last be stricken out as not responsive to any question asked him.

Mr. Kelley. I think it is a fair answer.

The Court. I think it is responsive.

Mr. Ford. May I have an exception?

The Court. Yes.

By Mr. Ford:

Q. Other than those two times in 1940 and three or six months ago, have you ever talked to this defendant? A. No, I have not.

Q. And from 1940, the first time you met him, until I understood you to say you were a member of the Communist Party, until 1944— A. That is right.

Q. From 1940 up to and including 1944, when you ceased to be a member, during that time had you ever talked to this defendant? A. No, sir.

Q. And were you in the City of New York during that time? A. I was.

Q. And were you active in the Communist movement during that time? A. I was.

Q. What were you doing? What was the nature
425 of your employment three or six months ago when you say you saw his picture in the paper? A. Well, I worked for, I believe the Stenotype Company, New York City.

Q. And that is what your employment was then? A. Yes, sir.

Q. And then after you saw his picture in the paper, did you go and take that picture to someone? A. No, sir.

Q. Did you have a conversation with someone about that picture? A. My wife.

Q. Anyone else? A. No, sir.

Q. And between that time up until a week ago, did you—other than your wife—talk or discuss with anyone that particular picture? A. I spoke with Mr. Kelley.

Q. When was the first time you spoke with Mr. Kelley? A. At the Grand Jury hearing, New York.

Q. When was it? A. Once again I will have to think deeply about the extent of time. Let me see. That was about three months ago, if I am not mistaken.

Q. How long was it after you had seen the pic-
426 ture that you saw Mr. Kelley? A. Well, that was about a few months.

Q. After you had seen the picture? A. That is right.

Q. During those three months had you talked to anybody other than your wife about the picture? A. Well, Mr. Waltman of the World-Telegram called my wife up in reference to it.

Q. My question is, did you talk to anyone? A. No, I didn't. I was simply asked to see Mr. Kelley, and I came to Washington here and saw him.

Q. When did you come to Washington? A. That is about three or four months ago also.

Q. And did you have the pictures with you at that time? A. No, sir.

Q. And at whose request did you come to Washington? A. Mr. Kelley.

Q. And when did you get the request from Mr. Kelley in relation to the time when you came to Washington? A. Through my wife.

• • • •

427 The Witness. Shortly before the time of the Grand Jury hearing in New York.

By Mr. Ford:

Q. Now, did you use the address 35 East 12th Street, New York City? A. There were two entrances. 35 East 12th——

Q. No, my question is, did you use that address, 35 East 12th Street, New York City? A. I did.

Q. What did you say was located at 35 East 12th Street, New York City? A. Do you want me to give you floor by floor?

428 Q. Well, is it a store or is it a building or an apartment house? A. It is a loft building that constitutes the headquarters of the Communist Party of the United States.

Q. Did you know a place at 14th and Avenue C in New York City? A. I believe that is the place I referred to in which I spoke.

Q. You spoke about what? A. In which I was invited. I believe that is the place; the headquarters of the local Communist Party, in which Mr. Marzani was the section educational director.

Mr. Ford. I move that the last is voluntary and that the conclusion be stricken out.

The Court. It is repetitious.

Mr. Ford. May it be stricken out, your Honor?

The Court. It may be stricken out because it has no useful purpose. It was previously testified to.

By Mr. Ford:

Q. Now, you said you used several names, among which

was Timothy Holmes. Is that H-o-l-m-e-s? A. H-o-l-m-e-s.

Mr. Kelley. Excuse me, counsel. Did you say seven or several?

The Court. Several.

Mr. Ford. S-e-v-e-r-a-l.

The Witness. Timothy Holmes was the one I worked with.

429 By Mr. Ford:

Q. Give me any and all other names you used. A. The passport name was Jackson.

Q. Does it have a front name to it? A. I think it was George Jackson. The name they gave me in Russia was George James.

Q. Would you spell that last for me, please? George what? A. J-a-m-e-s. George James is the Russian name they gave me.

That is all.

Q. Those three names comprise all of them; is that right? A. Those are my professional names.

Q. Now, George Jackson you said was used how? A. For my passport out of the country.

Q. Do you have it? A. I have the passport.

Q. Let me see it, please. A. No, not with me. I have it at home. I could send it to you, if you want me to.

Q. Yes, I would. Would you have it sent to me tomorrow morning? A. Well, I don't know. I will have to get it. My wife doesn't know where——

430 Mr. Kelley. What was the answer?

The Witness. I will have to have my wife send the passport.

By Mr. Ford:

Q. Now, is it or is it not a fact that you were expelled from the Communist Party after 18 years because of your conduct against the Negro people? A. I was never expelled.

* * * *

NOTE. For further cross examination of Hewitt see pp. 117-120 *supra*. In direct and cross examination of

For

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Hewitt as a witness called by defendant, see pp. 129-139 *supra*

886 *Garson Kanin*

was called as a witness for and on behalf of the defendant

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887 *Direct Examination*

By Mr. Ford:

• • • •

Q. And what is your occupation? A. I am a playwright and director.

Q. And you have shows going on now, have you, that you produced? A. Yes, sir.

Q. Do you know a Carl Marzani? A. Yes, sir.

Q. And I wonder if you can pick him out in this room, if you can. A. I would say that was Carl (pointing).

Mr. Ford. May the record show he pointed to the defendant, your Honor?

The Court. Yes.

By Mr. Ford:

Q. How long have you known him? A. I met Carl Marzani for the first time in the course of my Army duties in October 1942.

888 Q. And was that in the city of Washington? A. Yes, sir.

Q. And particularly, what duties, generally? Was that in the Office of Strategic Services? A. Yes, sir. I met him on the very first day that I was assigned to duty in the Office of Strategic Services, having been transferred from the Air Force in Texas.

Q. And beginning on that date, which I understood you to say was October 1942, for how long a period continuously after that did you know Mr. Marzani here in Washington? A. Until I went overseas for the Office of Strategic Services—

The Court. If you can tell the date, sir, that is the question.

The Witness. The exact date, sir.

The Court. No, I assume he wants the best that you know.

By Mr. Ford:

Q. Your best recollection. A. I see. Until May 1944, when I went overseas.

Q. And during that period of time you knew him here in the city of Washington; correct? A. Yes, sir.

Q. Now, since that time, the last date you gave, up until the present time, have you seen or talked to
889 Mr. Marzani? A. No. I haven't seen him since I left to go overseas, and I haven't talked to him, either in person or on the telephone.

The Court. Have you written him, sir, or he written you?

The Witness. I wrote him one letter, to which I received no reply.

By Mr. Ford:

Q. I will ask you, during that period in Washington, did you know other people in the community who knew him? A. Oh, yes, sir.

Q. Now, amongst those people, what was Mr. Marzani's reputation for truth and veracity? A. I don't distinguish the difference between them. Is there some reason why it is truth and veracity?

Q. No. Amongst those people, what was his reputation for truth? A. I would say it was excellent, as good as mine.

Q. Amongst those people, what was his reputation for peace and good order and being a law-abiding citizen? A. First-rate.

Q. And amongst those people, what was his repu-
890 tation for loyalty and integrity? A. Well, sir, the question never came up.

Mr. Ford. You may examine.

By Mr. Kelley:

Q. You shared, did you, that opinion concerning his reputation for loyalty? A. Yes, sir. I had no reason to doubt it.

Q. Would your testimony be the same if you knew that Carl Aldo Marzani had been a branch organizer for the Communist Party in New York in 1940 and '41? A. I am very sorry, I don't follow that question.

Q. Well, I will repeat it.

Would your testimony be the same as to your high regard for his reputation as to loyalty, if you knew that he had been a branch organizer for the Communist Party in New York City in 1940 and '41? A. Well, it seems to me the question answers itself, because—

Q. Well, no it does not. I want your answer. A. Well, obviously, if he were and did not make it known in any way, that would make him a man who was dishonest.

Q. In your opinion? A. Yes, sir.

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United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9595

CARL ALDO MARZANI, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the District Court of the United States for the District of Columbia

Argued November 18, 1947. Decided February 2, 1948.

Mr. Arthur Garfield Hays, of the Bar of the State of New York, *pro hac vice*, by special leave of Court, and *Mr. Allan R. Rosenberg*, with whom *Messrs. Charles E. Ford* and *Warren L. Sharfman* were on the brief, for appellant.

Mr. John M. Kelley, Jr., Special Assistant to the Attorney General, and *Mr. Leo A. Roth*, Attorney, Department of Justice, with whom *Mr. George Morris Fay*, United States Attorney, was on the brief, for appellee. *Mr. Sidney S. Sachs*, Assistant United States Attorney, and *Miss Rosalie M. Moynahan*, Attorney, Department of Justice, also entered appearances for appellee.

Mr. Belford V. Lawson, Jr., filed a brief on behalf of the National Lawyers Guild as *amicus curiae*, urging reversal.

Mr. Joseph Forer filed a brief on behalf of the Civil Rights Congress as *amicus curiae*, urging reversal.

Before GRONER, C. J., and WILBUR K. MILLER and PRETTYMAN, JJ.

PRETTYMAN, J.: Appellant Marzani was indicted, tried, convicted and sentenced for having made false and fraudulent statements in a matter within the jurisdiction of an agency of the United States Government in violation of Section 80 of Title 18 of the United States Code. From the judgment of the District Court he appealed.

Appellant's first point is that the first nine counts of the indictment were barred by the statute of limitations. Dates are the important facts in this connection. In 1940 and 1941 Marzani lived and worked in private pursuits in New York City. In February, 1942, he applied

for a position in the Government service. On March 7, 1942, he was employed as a war service appointee, subject to a character and fitness examination. On July 29, 1942, in the course of that examination, he was interrogated under oath by a representative of the Federal Bureau of Investigation. On November 23, 1942, he was similarly examined by representatives of the Civil Service Commission. As a result of the latter inquiry, he was rated ineligible. He appealed, and on April 20, 1943, he was given a hearing before the Board of Appeals and Review of the Commission. That Board reversed the initial ruling and rated him eligible. He was employed in the Office of the Coordinator of Information and the Office of Strategic Services as a civilian from March, 1942, until November, 1943, and in the latter service in military status until September, 1945, when he was honorably discharged as a master sergeant, and then with the same organization in a civilian status again until November 15, 1946. During the latter period, his unit of O. S. S. was transferred to the State Department. Marzani was then Deputy Chief of the Presentation Division. On November 15, 1946, after some discussions with his superior, he resigned and entered private employment as a producer of films for labor unions. On December 20, 1946, he was notified that he had been discharged from the State Department in the interest of the United States.

Marzani was indicted January 17, 1947. The indictment was in eleven counts, the first nine of which related to statements made by him in the course of the F. B. I. and Civil Service Commission inquiries in 1942.

In general the statements alleged by the indictment to have been false were answers to questions whether Marzani had ever been a member of the Communist Party, ever attended meetings of that party, contributed services to that party, and similar inquiries. In the indictment and upon the trial, it was charged that his negative answers were false. The falsity was alleged to have been established by activities of the defendant in New York City in 1940 and 1941.

The ordinary period of limitations for these offenses is three years.[1] Unless the running of that period was suspended, in the manner to be discussed, the first nine counts of this indictment were barred. The question is whether the running of the ordinary limitation was suspended in this case.

Two statutes are involved. The first is that under which the indictment was laid, which is Section 80, Title 18, of the United States Code, in its present form an act of June 18, 1934,[2] with minor changes by an act of April 4, 1938;[3] Section 35 of the Criminal Code. For ease in discussion, we shall refer to the pertinent clause of this statute as the False Claims Act. That clause provides:

> ". . . ; or whoever shall knowingly and wilfully . . . make . . . any false or fraudulent statements or representations, . . . in any matter within the jurisdiction of any department or agency of the United States . . . shall be fined not more than $10,000 or imprisoned not more than ten years, or both."

[1] 45 Stat. 51 (1927), 18 U. S. C. A. § 582 (Supp. 1946).
[2] 48 Stat. 996.
[3] 52 Stat. 197.

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The other statute is Section 590a of Title 18 of the United States Code, which is an act of August 24, 1942,[4] as amended July 1, 1944,[5] and October 3, 1944;[6] Section 19(b) of the Contract Settlement Act of 1944 and Section 38 of the Surplus Property Act of 1944. For ease in discussion we shall refer to this statute as the Suspension Act. In pertinent part it provides:

> "The running of any existing statute of limitations applicable to any offense against the laws of the United States (1) involving defrauding or attempts to defraud the United States or any agency thereof whether by conspiracy or not, . . . shall be suspended until three years after the termination of hostilities in the present war as proclaimed by the President or by a concurrent resolution of the two Houses of Congress."

The question before us is whether the Suspension Act applies to offenses under the False Claims Act.

We see no escape from the conclusion impelled by two decisions of the Supreme Court, *United States* v. *Noveck*[7] (and its companion cases, *United States* v. *McElvain*[8] and *United States* v. *Scharton*[9]) and *United States* v. *Gilliland*.[10]

In *United States* v. *Noveck*, the question was whether a statute which read, "That in offenses involving the defrauding or attempts to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner, . . . the period of limitation shall be six years",[11] applied to perjury in an income tax return. The indictment alleged that the perjury was for the "purpose of defrauding the United States". The Supreme Court held that the six-year statute did not apply, because defrauding the United States is not an element of the crime of perjury. The language of that statute of limitations is the same as that of the Suspension statute here involved; in fact, that statute was the predecessor to this one.

In *United States* v. *McElvain*, *supra*, the Court held that the six-year statute of limitations involved in *United States* v. *Noveck* did not apply to a conspiracy to defraud the United States by making a false income tax return. In *United States* v. *Scharton*, *supra*, the indictment was for an attempt to evade taxes by falsely understating taxable income. The defendant pleaded the statute of limitations. The United States contended that attempts to obstruct or defeat the lawful functions of any department of the Government, if accompanied by dishonest methods, are attempts to defraud the United States. The Court held that the six-year limitation applicable to

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[4] 56 STAT. 747.

[5] 58 STAT. 667.

[6] 58 STAT. 781.

[7] 271 U. S. 201, 70 L. Ed. 904, 46 S. Ct. 476 (1926).

[8] 272 U. S. 633, 71 L. Ed. 451, 47 S. Ct. 219 (1926).

[9] 285 U. S. 518, 76 L. Ed. 917, 52 S. Ct. 416 (1932).

[10] 312 U. S. 86, 85 L. Ed. 598, 61 S. Ct. 518 (1941).

[11] 42 STAT. 220 (1921).

offenses involving the defrauding of the United States, was not applicable to the offense described in that indictment.[12]

The United States seems to agree with the foregoing view of the *Noveck* and its allied cases. It says that the Suspension Act "was modeled upon the proviso" in the 1921 Act; that the 1921 and 1926 provisos "are in all essential respects identical with" the present Suspension Act; and that "said cases were decided in accord with the principle first enunciated in *United States* v. *Noveck*, to wit, that in order to be affected by the suspension statute 'defrauding or an attempt to defraud' the United States must be *an ingredient* under the statute defining the offense."

In *United States* v. *Gilliland*, *supra*, the question was whether the False Claims Act was restricted to matters in which the Government has some financial or proprietary interest. The Court held that it was not. The conclusion was premised largely on the fact that by amendment in 1934[13] Congress had eliminated from the statute as it had theretofore existed[14] the words "or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States," and that the legislative history of the amending act showed that this omission was deliberate and intentional. Thus, the Court held that defrauding the United States in a pecuniary or financial sense is not a constituent ingredient of offenses under the False Claims Act.

It necessarily follows, in our view, that the Suspension Act does not apply to offenses under the False Claims Act. The Supreme Court has clearly said (1) that a statute identical in pertinent part with the Suspension Act does not apply to offenses of which defrauding the United States in a pecuniary way is not an essential ingredient; and (2) that such defrauding of the United States is not an essential ingredient of offenses under the False Claims statute. If perjury on an official document required to be filed under a federal statute, the making of false income tax returns and an attempt to evade taxes are not defrauding the United States within the meaning of a statute of limitations, we do not see how making a false statement in the course of an inquiry into one's qualifications for federal employment can be.

The contention of the Government is that the *Gilliland* case, *supra*, merely held that an intention to swindle or defraud the Government, resulting in property or pecuniary loss, is not an element of proof under the False Claims Act; and that that Act retained, after its amendment, "all its essential fraud characteristics", that "the con-

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[12] Other cases referred to in the briefs in this connection are *Bailey* v. *United States*, 13 F. 2d 325 (C. C. A. 9th, 1926); *Weinhandler* v. *United States*, 20 F. 2d 359 (C. C. A. 2d, 1927), *cert. denied*, 275 U. S. 554, 72 L. Ed. 423, 48 S. Ct. 116 (1927); and *Falter* v. *United States*, 23 F. 2d 420 (C. C. A. 2d, 1928), *cert. denied*, 277 U. S. 590, 72 L. Ed. 1003, 48 S. Ct. 528 (1928). In the *Bailey* case, the court held that defrauding the United States was a statutory ingredient of the offense of uttering and publishing a forged indorsement to a Government check with intent to defraud the United States. In the *Weinhandler* case, the court held that fraud is an element of the crime of embezzlement, and that, therefore, the six-year limitation in the 1921 proviso applied. In the *Falter* case, the court held that a conspiracy to commit a civil fraud is a crime under the conspiracy statute.

[13] 48 STAT. 996.

[14] 40 STAT. 1015 (1918).

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ception of fraud against the United States formerly expressed in the statute" was retained by the 1934 amendment. It says that a false statement made in a matter within the jurisdiction of an agency of the United States *necessarily* [italics in Government brief] involves a fraud". The gist of the Government's contention is stated thus:

> "However, where an offense violative of the second clause involves 'knowingly and wilfully' making 'false and fraudulent statements,' the statute (recognizing the intrinsically wilful and fraudulent element in the very nature of the acts proscribed) does not require the government to establish proof of (a) intent to defraud, or (b) pecuniary or property loss to the United States. Hence, the essential fraud elements continue as a constant in Section 80, although the accidental language has changed insofar as 'intent of cheating and swindling or defrauding' found in the Act of October 23, 1918, may have varied the form rather than the substance of the offense."

The difficulty with the foregoing contention is that it ignores the plain ruling in *Noveck* and kindred cases. Those cases involved false statements, under oath. The offenses tended to obstruct, by dishonest means, the operation of a department of the Government. The Court held that the Suspension Act (actually an identical predecessor) does not apply to such offenses. So that even if the False Claims Act does involve the sort of fraud the Government says it does, the Suspension Act does not apply; the rulings in the *Noveck* and similar cases related to precisely that same sort of fraud. Despite the vigor and skill with which the Government's contention is pressed upon us by its counsel, we can see no escape from that conclusion. It follows that we are of opinion that the first nine counts of this indictment were barred by the statute of limitations, and the defendant's motion that they be dismissed should have been granted.

Appellant's next point is that the admission of the evidence relating the first nine counts was substantially prejudicial to defendant in respect to the last two counts, and that, therefore, the conviction upon those two counts must be set aside. The tenth and eleventh counts were that defendant had, on or about June 1, 1946, falsely represented to his superior in the State Department, in the course of an official inquiry into his fitness for retention in the Government service, that he had never been a member of the Communist Party and that he had never used the name or been known as Tony Whales. Counts I, V, VI and VIII charged that he made exactly the same false statements to the F. B. I. and the Civil Service Commission in 1942.

If the defendant had been on trial for only his two 1946 statements, the issue would have been the truth or falsity of those statements. Obviously, all the evidence relevant and material to that issue would have been admissible in such a trial. Note that these statements made by Marzani in 1946 were that he had *never* been a member of the Party or used the alias. Evidence that he had been a member and used the alias in 1940-41 was thus clearly admissible. That admissibility could not be nullified by the mere fact that he made the same statements in 1942. And we do not see that evidence that he had made the same statements in 1942 was prejudicial to him upon

a trial as to the truth of the 1946 statements; in fact, it would appear to have been beneficial, in that it showed that he had consistently from a time close to the event maintained the same position.

Evidence was also introduced to show that Marzani had attended meetings of the Communist Party, contributed services to that Party, participated in its activities, and made speeches against conscription. In Counts II, III, IV, VII and IX, respectively, it was charged that in 1942 and 1943 he had falsely stated to the F. B. I. and the Civil Service Commission that he had never done any of those things. The evidence that he had done them was directed to those particular counts, although its admission was not limited to them. Appellant especially urges that this evidence, relating, so he says, to the barred counts, was prejudicial to him in respect to the two valid counts. But we think that the evidence as to these several specific activities bore directly upon the charge that Marzani falsely said in 1946 that he had never been a member of the Communist Party. Evidence that he attended meetings of the Communist Party, contributed services to it, participated in many of its activities, and made speeches consistent with its policies was relevant, material, and indeed substantial evidence upon the disputed issue of membership in the Party. That he denied in 1942, as he did in 1946, that he had ever done those things does not seem to us prejudicial to him upon a trial of the issue whether he had or had not ever been a member of the Communist Party. Here again his undeviating consistency of position would seem to have been beneficial rather than prejudicial.

The sum of the foregoing is that we think that all of the evidence which was actually introduced at this trial, including the evidence of his 1940-41 activities, and the evidence that he made these same or similar statements consistently in 1942-43, would have been admissible in a trial limited to the last two counts of the indictment. Therefore, we can find no error in its actual admission here.

There remains, in connection with this phase of the case, the question whether the inclusion of the barred counts as issues upon the trial, and the submission of those nine counts to the jury, were substantially prejudicial to the defendant in a trial which could validly involve only the last two counts. It was error to permit the first nine counts to remain in the indictment and to go to the jury. The question is whether that error was prejudicial to the defendant's rights in his trial upon only the last two counts. The function of an appellate court under the applicable rule[15] and statute,[16] and the history and meaning of that rule and statute, have been too thoroughly and carefully stated recently by Mr. Justice Rutledge in the opinion in *Kotteakos* v. *United States*[17] to require elaboration. Two features of the case at bar determine the answer here. The first feature is that which we have just found, *i. e.*, that no evidence was improperly admitted by reason of the erroneous inclusion of the barred counts upon the trial. The second determinative feature of the case upon this point is that the statements alleged to have been false in the barred counts were the same as, or similar to, the statements involved in the two

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[15] Fed. R. Crim. P., 52(a).

[16] Sec. 269 of the Judicial Code, as amended, 40 Stat. 1181 (1919), 28 U. S. C. A. § 391 (1928).

[17] 328 U. S. 750, 90 L. Ed. 1557, 66 S. Ct. 1239 (1946).

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counts properly on trial. The truth or falsity of the statements was the only issue, since Marzani did not deny making them. That issue depended entirely upon activities alleged to have occurred in 1940-41. Therefore, the issue actually submitted to the jury was actually and in fact the same as it would have been if only the last two counts had been submitted. If they were false in 1946, they were false in 1942, and vice versa. Our view on this point is the same as the view we have expressed above upon the evidence. We cannot see how the fact that he was charged with making a false statement in 1942 could be prejudicial to him in a trial involving the sole issue whether that same statement, made again in 1946, was true or false. The trial court told the jury, "The simple issue here involved is whether or not the defendant knowingly, wilfully, and feloniously made false and fraudulent answers to the questions asked of him." Those answers were the same in 1946 as in 1942—indeed they were categorically asserted as true by defendant on the witness stand. The evidence as to truth or falsity was the same as to all as it was to the two made in 1946. We think that the fact that the Government charged that the 1942 statements were, like the 1946 statements, false, was not, under those circumstances, substantially prejudicial to defendant's rights upon the trial.

Appellant's next point is that the trial court erred in its instruction to the jury upon the subject of good character. Defendant introduced evidence of good character. The court said to the jury, in the course of its charge:

> "And, I might add at this point, that evidence of good character, taken in conjunction with all the other evidence before you, might be sufficient to create in your minds a reasonable doubt."

This instruction followed almost precisely what we characterized in *Colbert* v. *United States*,[18] as "the language in which the instruction should have been couched." Appellant says that the clause "where, without it, you may have been convinced of his guilt" should have been added. Perhaps the suggested clause would have made clearer that which was already clear, but it would have done no more than that. We cannot find error in its omission.

Appellant next contends that the trial court improperly excluded certain evidence relating to Negroes because of the presence of nine Negroes on the jury, such exclusion being in violation of defendant's constitutional right to a fair trial. Because of the unique nature of this contention and the seriousness of the error if appellant's version of the reason for the disputed rulings by the court be correct, we have carefully read all the various portions of the printed appendix surrounding the incidents mentioned, although appellant does not cite to us any specific place at which the court indicated such reasons for its rulings. Appellant's general contention is that the combination of circumstances that nine of the twelve jurors were Negroes, that the three prosecution witnesses testifying to the falsity of defendant's statements were Negroes, and that the defendant himself was active in causes and upon occasions in behalf of Negroes, "conditioned the Court's rulings on the admission and exclusion of evidence". It is difficult to follow the precise course of appellant's argument in this respect, but his general statements and the implica-

[18] 79 U. S. App. D. C. 261, 146 F. 2d 10 (1944).

tions are such as to require examination of all that transpired. Appellant cites three examples. The first occurred when Marzani, on the witness stand, began to relate an incident concerning the beating of two Negroes by police in New York. The court called counsel to the bench and, adverting to a prior reference by Marzani to "leaks" by named officials of the State Department and the F. B. I. to named newspaper people, which the court had interrupted and stricken, told counsel that he foresaw an attempt to lead up to a prejudicial statement. The court referred to the "outburst with reference to the FBI and State Department" repeatedly, and iterated its determination that the case go to the jury "without prejudicial bias, sympathy or hatred". The utmost that the court said was "Well, the prejudice has happened here, so far as this is concerned, but in the future if you find yourself in a situation like that, will you please approach the bench?" When the trial was resumed, counsel for the defendant said, "Your Honor, I do not see how I can ask it except to bring out the discussion", and the court said, "All right, sir." The examination then proceeded without interruption.

The second example cited was in the course of the cross-examination of the prosecution witness Drew. Appellant says that the cross-examination was improperly limited by the court. He says, "The Court's refusal to permit this whole line of inquiry was erroneous . . ." We do not find that the court refused to permit the whole line of inquiry. When counsel for appellant had asked a series of questions of Drew concerning the National Negro Congress, the court called counsel to the bench and asked the purpose of the line of inquiry. In an extended colloquy, the court ruled that it would permit questions to establish that the testimony of another prosecution witness, Harper, concerning his membership in the Communist Party, was not true, and questions concerning meetings attended by the witness and the defendant and concerning any occasion as to which there was testimony upon direct examination; but the court said that it would not permit "at this time, sir" a question which included what the court thought was an erroneous statement of previous testimony by the witness, or questions concerning meetings and activities of the National Negro Congress not participated in by defendant and not testified to upon direct, and a series of questions of which an example was, "In 1940 and 1941, whenever you heard a person speak against police butality, did you consider that person a Communist?" We cannot find error in these rulings of the court. Full opportunity was given to explore the testimony given upon direct. The limitations were upon the testing of credibility by inquiring into matters not included in direct examination, and questions whether the witness "considered" certain persons Communists. We do not find in these rulings the basis which appellant sees behind them. So far as the record shows, the rulings would have been the same regardless of the racial composition of the jury. Appellant says that he sought to show that Drew was an *agent provacateur* in that he organized the National Negro Congress on the East Side. We do not find any undue restriction of cross-examination upon that subject. The witness was asked, and answered without objection or restriction, a series of questions upon it. He stated that he organized or helped to organize the East Side Council of the Congress, that the witness Harper helped

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him to organize it, and that he (the witness) solicited memberships in it. Full argument as to the witness's role was available to appellant upon that testimony. The witness's activities were collateral to the issue in this case. Only to the extent that they constituted misconduct which had a tendency to show his lack of honesty or truthfulness could he be cross-examined upon them, and the court, having permitted sufficient inquiry to establish the basic facts in this respect, could, in its discretion, control the extent to which the matter could be pursued.[19]

The third example cited by appellant under this point was in the course of the cross-examination of the prosecution witness Harper. Harper had testified that a meeting sponsored by the National Negro Congress had been held and that the defendant, under the name "Tony Whales", had spoken as a representative of the Communist Party. On cross-examination of Harper, counsel for defendant said, "I would like to have you list some of the purposes of the National Negro Congress; what its objects were." After the answer had proceeded somewhat, the court called counsel to the bench and after a colloquy announced that it would permit inquiry concerning the meeting but would not go into "the organization and desires and aims of this Congress." The court did not indicate that its reasons were those now assigned it by appellant; it said, "We are not concerned with that", obviously meaning that the subject matter was irrelevant to the issue in the case, which was the truth or falsity of defendant's statements that he had never been a member of the Communist Party or been known as Tony Whales. We find no error in the limitation imposed by the court upon the extent to which this line of cross-examination could be pursued.

The appellant next says that the court erred in permitting prosecution witnesses to use expressions such as "Communist Party", "Communist meetings" and "Communist activities", because they involved opinions as to what is a "Communist". We are given no citations to places in the record where objections were made to the use of such expressions. Moreover, the same objection might be made to the use of almost any word. ". . . there are few statements of fact that are not conclusions of fact."[20] Appellant also contends that it was error to permit the introduction in evidence of leaflets distributed at meetings attended by Marzani, at some of which he spoke. They were admitted to show the character of the party, the meetings and the activities with which the defendant was identified by presence or participation. We find no error in the rulings of the trial court upon these questions of evidence.

We have considered the entire evidence, both direct and cross, of the prosecution in this case as it is presented in the printed joint appendix, in order to ascertain the substance of that evidence and the fairness of its presentation. It is almost entirely specific, describing meetings, speeches and identified acts of the defendant, and personal acquaintance with him as "Tony Whales". The defendant

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[19] Pullman v. Hall, 55 F. 2d 139, 141 (C. C. A. 4th 1932), and authorities there cited; Simon v. United States, 123 F. 2d 80, 85 (C. C. A. 4th 1941), and cases there cited. *See* Ewing v. United States, 77 U. S. App. D. C. 14, 135 F. 2d 633 (1942), *cert. denied*, 318 U. S. 776, 87 L. Ed. 1145, 63 S. Ct. 829 (1943).

[20] 3 WHARTON, CRIMINAL EVIDENCE 2149 (11th ed. 1935).

in his turn categorically denied the occurrence of many of these events, explained the nature of his participation in others, denied that he had ever known some of the prosecution witnesses, and denied that he had ever been known as Tony Whales. There was a sharp issue of truth presented. The judge's charge was a careful, uncolored presentation of the issue to the jury. On the whole record, we must conclude that the jury decided the issue of fact thus presented. With that function this court cannot interfere.

The jury returned verdicts upon each of the counts. The court imposed sentence generally upon the verdict. Under the rule long since established[21] that "in the absence of anything in the record to show the contrary, the presumption of law is that the court awarded sentence on the good count only", the judgment must be, and it is

Affirmed.

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[21] Claassen v. United States, 142 U. S. 140, 146, 35 L. Ed. 966, 968, 12 S. Ct. 169 (1891); Whitfield v. Ohio, 297 U. S. 431, 438, 80 L. Ed. 778, 56 S. Ct. 532 (1936).

[fol. 282] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Feb. 2, 1948. Joseph W. Stewart, Clerk.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, JANUARY TERM, 1948

No. 9595

CARL ALDO MARZANI, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for the District of Columbia.

Before: Groner, C. J., and Wilbur K. Miller and Prettyman, JJ.

JUDGMENT

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

Per Mr. Justice Prettyman.

Dated February 2, 1948.

[fol. 283] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Feb. 7, 1948. Joseph W. Stewart, Clerk.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, APRIL TERM, 1947. No. 48-47 CRIMINAL DISTRICT COURT

No. 9595

CARL ALDO MARZANI, Appellant,

v.

UNITED STATES OF AMERICA, Appellee

PETITION FOR REHEARING

Comes now Carl Aldo Marzani, appellant in the above entitled cause, by his duly authorized attorneys, and without waiving any of the grounds of appeal heretofore made, presents this, his petition, for a rehearing of the above entitled cause, pursuant to Rule 26 of the General Rules of this Court, and, in support thereof, respectfully shows:

1. *The Court in its Opinion dated February 2, 1948 failed to pass upon the issue raised by appellant that the statute (U. S. C. Title 18, Sec. 80 (2)) as applied to the trial of the last and only timely two counts of the indictment herein is invalid because violative of appellant's rights to due process and a fair trial.*

The issue is whether the statute can be constitutionally applied to a prosecution for statements not required to be made, not under oath, not stenographically transcribed, never reduced to writing, made at a private conference [fol. 284] initiated wholly at appellant's request, which he was not required to attend, solely to ask the reasons of his superior in the government for a request which had been made for appellant's resignation, where the only two participants in the conference addressed each other throughout by their first names and discussed a wide variety of other topics, where no suitable notice was given by regulation or otherwise of the consequences of knowingly and wilfully making any false or fraudulent statements, and where the statute provides criminal penalties for false and fraudulent statements made "in any matter within the jurisdiction of any department or agency of the United

States". The controlling facts as to this issue, as set forth above, are based on the testimony of the only government witness to the conference in which the statements were made and are substantially undisputed. (Joint Appendix 48-55, 59-60, 176-179) The government in its brief concedes that appellant requested the interview, that he met and conferred privately with his superior, that he was not under oath and that the proceedings were not transcribed. It adds that appellant had been officially requested to resign and that his superior with whom he conferred was officially authorized to deal with security and personnel matters. (Brief for Appellee p. 3)

Does the application of the statute to a prosecution for false statements made under these circumstances meet the requirements of notice, duty, formality and definiteness which are constitutionally required for due process and a fair trial?

This issue was saved by the Supreme Court in passing on the constitutionality of this same statute in *United States* [fol. 285] v. *Gilliland* (312 U. S. 86, 91) where it held that the statute as applied in that case could not be deemed invalid because of the indefiniteness, because

"The affidavits and reports *required* had been sufficiently described and the *duty enjoined* had been *adequately defined.*"

In that case, the Secretary of the Interior had promulgated regulations under the so-called "Hot Oil" Act, which the President had approved, and a Board was thus set up, with which monthly reports on forms approved by the Secretary were required to be filed. The Supreme Court stated:

"Anyone presenting the *required* affidavits and reports to the Board set up under the *pertinent regulations* was *suitably charged with notice* of the consequence of knowingly and wilfully including therein any false and fraudulent statements." (underscoring supplied)

The limitations thus applied in the *Gilliland* case conform to the rulings by the Supreme Court in a long line of cases that no one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes (*Lanzetta* v. *New Jersey* 306 U. S. 451, 453 (1939); see *Kline* v. *Frink Dairy* 274 U. S. 445, 458 (1927), that such

statutes must adequately, explicitly and unambiguously inform those subject to its terms what conduct will be considered criminal (*Kraus & Bros.* v. *United States* 327 U. S. 614, 621 (1946); and that every man should be entitled to know with certainty when he is committing a crime (*U. S.* v. *Reese* 214, 220 (1875).*

[fol. 286] In the light of these facts and applicable law, and particularly of this Court's decision in the case at bar, holding that it was error to permit the first nine counts to remain in the indictment and to go to the jury, the question of the validity of the last and only timely two counts, becomes of major importance. A decision, *sub silentio*, that these two counts are constitutionally valid, would not serve the ends of justice, would be an important decision on a question of the administration and constitutional application of this statute, probably untenable and in conflict with the weight of authority and on a federal question which has not been but should be settled.

Counsel for appellant, after diligent search, has been unable to find any case decided under this statute where a conviction has been sustained unless the circumstances of the case indicated that the statements alleged to be false were required to be made and suitable notice was given of the consequences of knowingly and wilfully making a false and fraudulent statement, under definitely ascertainable standards of guilt.

This issue as to the invalidity of the last two counts was properly raised, we submit, prior to and during the argument of this case and is properly before this Court. It is true that the point was not explicitly raised in appellant's main brief, and, to that extent, the omission of the Court to pass upon the point in its opinion may be the fault of appellant. The issue, however, was *raised* first raised in the Court below in Appellant's motion to dismiss the indictment,

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* Accord: *Screws* v. *United States* 325, U. S. 91, 102 (1944); *Herndon* v. *Lowry* 301 U. S. 242 (1937) *Collins* v. *Kentucky* 234 U. S. 634 (1934); *Smith* v. *Cahoon* 283 U. S. 553 (1931); *Connally* v. *General Construction Co.* 269 U. S. 385 (1936); *Champlin Refining Co.* v. *Corporation Commission* 286 U. S. 210 (1932); *Small Co.* v. *American Sugar Refining Co.* 267 U. S. 233 (1925); *United States* v. *Cohen Grocery Co.* 255 U. S. 81, 89, 92 (1921).

denied by that Court in its memorandum opinion (71 Fed. Supp. 615, 617-618 and renewed by appellant in sub-
[fol. 287] sequent motions during and after trial. (Joint Appendix 30-32, 46) It was raised explicitly by appellant in his Reply Brief (pp. 24-25) and by *amici curiae* in the briefs which they filed; it was argued briefly by counsel for appellant and more fully by counsel for the government in oral argument before this Court on November 18, 1947; and this Court by Order dated January 9, 1948, granted appellant's motion to amend its Reply Brief to include a conclusion thereto seeking dismissal of these two counts conformably with the argument thereon in this Reply Brief. This Court has power to decide the issue, under Rule 52(b) of the Federal Rules of Criminal Procedure, even though the error had not been brought to the attention of the Court. In this case, where substantial rights of appellant are affected, where the error was brought to the attention of the Court, in the manner indicated, and where appellant intends to raise the issue, if necessary, before the Supreme Court on a petition for a writ of certiorari, we submit that the Court in the interest of justice should exercise its power, grant this petition for rehearing and hear argument on the matter.

2. *The Court in its Opinion did not pass upon the issue raised by appellant that the admission in evidence of appellant's statements to the F. B. I. and to the Civil Service Commission in 1942-43 (Government Exhibits 20, 22, 30, 30(a), Joint Appendix 244-254) was prejudicial error because such evidence constituted proof of nine separate crimes, which this Court has held should not have permitted to remain in the indictment or to go to the jury.*

[fol. 288] The general rule of law is that proof of other crimes is not admissible to prove the crimes charged in the indictment, because of the prejudicial effect of such proof on the jury. The applicability of this rule to the case at bar was briefed extensively and raised at the oral argument by appellant (Brief for Appellant pp. 38-43, Reply Brief pp. 16-23) and by the Government (Brief for Appellee pp. 32-39) but neither the rule nor its applicability herein was adverted to in any way by the Court in its Opinion. The Opinion disposed of appellant's contention that the evidence under the first nine counts was prejudicial, by holding that such evidence, particularly as to appellant's 1940-41 activi-

ties, was relevant to the issue of the truth or falsity of appellant's 1946 statements under the last two counts, because the issue in both instances was the same, and that the relevance of the 1940-41 evidence could not be nullified by appellant's 1942-43 statements, which were beneficial rather than prejudicial, because they showed appellant's consistent and undeviating position in 1942-43 as in 1946.

In so holding, the Opinion did not consider some of the evidence of appellant's 1940-41 activities (See point 3 below) and failed entirely to pass upon any of the 1942-43 statements in the aspect of proof of other crimes for which, in the present posture of the case, appellant was not validly indicted or tried.

We submit that this question is one which affects substantial rights of appellant and that the Court should, therefore, pass upon this contention.

That the 1942-43 statements constituted proof of crimes is clear beyond cavil. These were the very statements in- [fol. 289] cluded in the indictment and submitted to the jury as a necessary part of the government's case in chief, upon which appellant was actually found guilty of nine separate violations of the False Claims Acts. The statements were the *sine qua non* of the convictions on these counts, since no such count could be sustained unless supported by a 1942-43 statement, whereas on a trial on the last two counts alone, the 1942-43 statements would be totally irrelevant.

Appellant did not introduce these statements as corroborative of the truth of his 1946 statements or to benefit himself by showing consistency of position. The government introduced them as the *sine qua non* of its case in chief to prove that they were false in the light of the 1940-41 activities and that thereby appellant had committed the crimes charged in the first nine counts. To show that appellant had denied that he was a Communist in 1942-43 does not prove that he was a Communist in 1946 or at any other time. In short, the 1942-43 statements are not relevant to prove the falsity of the 1946 statements; they were and are relevant only to the proof of the nine barred crimes. But the jury was presented with evidence establishing proof of these barred crimes and therefore must necessarily have reached its verdict on the last two counts in the light of the proof of the 1942-43 statements on which it found appellant guilty under the first nine counts. This is precisely what is prohibited by the rule of law as to proof of other crimes.

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Even if the Court is right in holding that the 1942-43 statements are relevant to a trial of the last two counts, the rule of law prohibiting proof of other crimes applies to make [fol. 290] the admission of such evidence reversible error "The general rule is that evidence of a wholly separate and independent crime, even though of the same nature is not admissible, *Kempe* v. *United States*, 5. Cir. 20 f. (2d) 736 . . . *little is to be gained by pointing out that its exclusion can hardly be justified on the ground of irrelevancy.*" *Modern Reed and Rattan Co.*, 159 (2d) 658, cert. den. 91 L. ed. 1215 (Reply Brief for Appellant p. 22).

The 1942-43 statements were irrelevant in the trial of the last two counts, or if relevant, were unnecessary to prove the government's case. Above all, they were prejudicial because they constituted proof of other crimes, and their admission in evidence, we submit, is reversible error.

Not having passed on the effect of the 1942-43 statements as proof of crimes not validly charged, the Court has affected substantial rights of appellant, without having met a contention properly raised in the briefs and argument.

The question involved is an important one of general law, and, although no case precisely on the point has been found, the great weight of authority sustains appellant's contention. We submit that the Court should exercise its power to grant appellant a rehearing and determine the question.

3. *The Court did not pass upon the issue that the admission on behalf of the government of evidence that appellant had advocated revolution, opposition to conscription, disintegration of the morale of the armed forces and the stirring up of racial discontent was prejudicial error, because such evidence constituted proof of crimes under Federal and State law, under counts barred by the statute of limitations.*

[fol. 291] The Court disposed of this issue by holding that all of the evidence submitted to the jury under the nine barred counts would have been admissible on a trial of the last two counts, since all such evidence was relevant and material on the disputed issue of membership in the Communist Party, which was raised in the tenth count.

In so holding, the Court, we submit, ignored Appellant's contention that some of the evidence (Joint Appendix 116, 98-99, 101, 103-105, 74-78, 106-107, 112-113, 115-117), particularly Appellant's advocacy of revolution and the use of

the army to overthrow the capitalists, (Joint Appendix 104-105, 116) constituted proof of crimes under Federal and State Law (cf. New York Penal Law §§ 160-166, *Gitlow* v. *New York*, 268 U. S. 652, and "*State Control of Subversive Activities*" IX Federal Bar Journal No. 1, pp. 76-78; U. S. C. Title 18, § 6) which fall within the rule of law prohibiting proof of other crimes. (Brief for Appellant pp. 41-42. Reply Brief pp. 16-23) The admission of such evidence cannot be justified on the ground stated by the Court that it was consistent with the policies of the Communist Party and therefore relevant to the issue of membership. There is no evidence in this record that the Communist Party at the time in question advocated the overthow of the government by force and violence and the most recent decision of the Supreme Court bearing on the question of such advocacy by the Communist Party is to the contrary. *Schneiderman* v. *United States*, 320 U. S. 118 (1942). The evidence in question was, therefore, irrelevant and unnecessary to prove membership, as to which direct evidence was admitted. Because the evidence in question [fol. 292] also constituted proof of other crimes under counts not validly on trial, it was prejudicial within the rule of law requiring reversal for the admission of such evidence.

The Court ignored this issue, which was raised in the briefs on both sides (Brief for Appellant p. 41, Brief for Appellee pp. 37-38, Reply Brief for Appellant pp. 16-23). For this and the further reasons urged under point 2 above, we submit that the Court should grant a rehearing and determine the question.

4. *The Court disposed of appellant's contention that the District Court prejudicially erred in permitting prosecution witnesses to use expressions such as "Communist," embodying opinions and conclusions, on the ground, in part, that "we are given no citations to places in the record where objections were made to the use of such expressions," whereas, in fact, appellant did give citations to such places in the record and objections were in fact made to the use of such expressions.*

See Brief for Appellant pp. 73, 75 footnote 14, 76 for citations to places in the record where objections were made to the use of such expressions (Joint Appendix 66-67, 77-78, 96-97, 265). We call the attention of the Court to the discussion of this question on pp. 71-77 of Appellant's Brief,

and on the grounds where urged, maintained that reversible error was committed. For this reason and because the Court disposed of our contentions, in part, on an erroneous ground, we submit the Court should grant a rehearing; upon the question now before it.

[fol. 293] 5. *The Court disposed of appellant's contention that the District Court prejudicially erred in permitting the introduction in evidence of Communist Party and other leaflets, not prepared or distributed by appellant, on the mistaken ground that: "they were admitted to show the character of the party, the meetings and the activities with which defendant was identified by presence or participation."*

As pointed out in our main brief (Brief for Appellant pp. 77-80, 9) these leaflets were admitted, over appellant's objections, without limitation or instructions to the jury as to the purpose for which such pamphlets might be considered. The Heine case 149 F. (2d) 485 cited by the government in its brief (p. 75), permitting the introduction of Nazi Party literature to show the character of the Nazi Party; its background and mode of operation, is distinguishable, and by inference supports appellant's position, because, in that case, the trial judge was "most circumspect in presenting all the issues and warning the jury against taking matters for granted." In the case at bar, the Court, although requested, failed so to charge the jury as to eliminate from its deliberations the danger of imputing to appellant the news expressed in the leaflets and merely reaching a verdict based on guilt by association. For the reasons urged in our main brief on this point and because the Court has disposed of our contention on an erroneous ground, we submit that the court should grant a rehearing.

Wherefore, upon the foregoing grounds, it is respectfully urged that this petition for a rehearing be granted, [fol. 294] and that the judgment of the District Court be upon further consideration reversed.

Respectfully submitted, Allan R. Rosenberg, Warren L. Sharfman, Attorneys for Appellant.

Certificate of Counsel

We, counsel for the above named appellant, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for the purposes of delay.

Allan R. Rosenberg, Warren L. Sharfman.

Certificate of Service

I certify that on February 7, 1948, I served one copy of the foregoing petition on John M. Kelley Jr., Esq., Special Assistant to the Attorney General of the United States, Department of Justice, Washington, D. C. and one copy of the same on George Morris Fay, Esq., United States Attorney, U. S. District Court House, D Street between 4th and 5th Streets, N. W., Washington, D. C. by mailing these copies regular United States mail, postage prepaid.

Allan R. Rosenberg.

February 7, 1948.

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United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9595

CARL ALDO MARZANI, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Before GRONER, C.J., and WILBUR K. MILLER and PRETTYMAN, JJ.

ON PETITION FOR REHEARING

April 22, 1948

PRETTYMAN, J.: Upon his petition for rehearing, appellant stresses one point which was not raised upon his principal brief, was mentioned in his reply brief, and was not discussed by the court in its opinion. Appellant now states the point as follows:

> "The issue is whether the statute can be constitutionally applied to a prosecution for statements not required to be made, not under oath, not stenographically transcribed, never reduced to writing, made at a private conference initiated wholly at appellant's request, which he was not required to attend, solely to ask the reasons of his superior in the government for a request which had been made for appellant's resignation, where the only two participants in the conference addressed each other throughout by their first names and discussed a wide variety of other topics, where no suitable notice was given by regulation or otherwise of the consequences of knowingly and wilfully making any false or fraudulent statements, and where the statute provides criminal penalties for false and fraudulent statements made 'in any matter within the jurisdiction of any department or agency of the United States'."

Upon the trial there was a direct contradiction of evidence concerning the circumstances and content of the conversations which formed the bases of the last two counts of the indictment. A Mr. Panuch testified that he was Deputy Assistant Secretary for Administration; that about April 30, 1946, he directed his assistant to request Mr. Marzani's resignation from the State Department; that in the latter part of May Mr. Marzani came to his office and said that his resignation had been requested for security reasons and asked

"what it was all about"; that he advised Mr. Marzani that the request was made pursuant to his authority; and that he thereupon advised Mr. Marzani of the various charges against him, including the charge that he was a Communist, a member of the Communist Party in 1940 and 1941, and operated under the alias of Tony Whales. The witness further testified that Mr. Marzani replied that there was nothing to the charges; that Mr. Marzani took the charges up one by one and said, among other things, "I am not and never was a member of the Communist Party" and "I was never known as Tony Whales." The witness testified to a long ensuing conversation with Mr. Marzani, saying, "That was a long conference. I think it took over two hours. You see, it was in the nature of an appeal from Fearing's [the witness's assistant] request. . . . It was in the nature of an appeal from Fearing's request for his resignation, and the man was appearing before me as Deputy Assistant Secretary, and he was entitled to have his day in court, and we just threshed the matter out thoroughly." Mr. Marzani, in his testimony on the stand, gave a somewhat different cast to the interview.

It is true, as the appellant says, that the statements were not under oath and were not stenographically transcribed; that the interview was at appellant's request; that there were only two participants in the conference; that they addressed each other by their first names; and that they discussed a wide variety of topics. However, it appears with equal clarity that Mr. Panuch was appellant's superior in office, that he had requested appellant's resignation, and that the purpose of the interview was to afford the appellant an opportunity to discuss the requested resignation and the charges upon which it was based. The pertinent statute[1] does not limit the offense to formal statements, to written statements, or to statements under oath. It applies to "any false or fraudulent statements or representations, . . . in any matter within the jurisdiction of any department or agency of the United States". In *United States* v. *Gilliland*,[2] the Supreme Court observed:

> "The amendment indicated the congressional intent to protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described. We see no reason why this apparent intention should be frustrated by construction."

We see nothing vague about the language "false or fraudulent statements or representations" nor any ambiguity in the language "in any matter within the jurisdiction of any department or agency of the United States" which would place in doubt the requirement that a government employee, discussing officially with his superior an official request for his resignation, must be truthful.

Appellant's petition for rehearing is

Denied.

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1 Sec. 35 of the Criminal Code, 48 STAT. 996 (1934), as amended, 52 STAT. 197 (1938), 18 U.S.C.A. § 80 (Supp. 1947).

2 312 U. S. 86, 93, 85 L. Ed. 598, 61 S. Ct. 518 (1941).

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[fol. 297] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Apr. 22, 1948. Joseph W. Stewart, Clerk.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, APRIL TERM, 1948

No. 9595

CARL ALDO MARZANI, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

Before: Wilbur K. Miller, Prettyman and Groner, JJ.

ORDER

On consideration of appellant's petition for rehearing herein and of appellee's opposition thereto, It is

Ordered by the Court that the petition for rehearing be, and it is hereby, denied, for the reasons indicated in the opinion this day filed herein.

Per curiam.

Dated April 22, 1948.

[fol. 298] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Apr. 27, 1948. Joseph W. Stewart.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 9595

CARL ALDO MARZANI, Appellant,

v.

UNITED STATES OF AMERICA, Appellee

DESIGNATION OF RECORD

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Joint appendix to briefs.
2. Opinion.

3. Judgment.
4. Petition for rehearing.
5. Order and opinion denying petition for rehearing.
6. This designation.
7. Clerk's certificate.

Allan R. Rosenberg, Attorney for Appellant.

Certificate of Service

I certify that on April 27, 1948, I served one copy of the foregoing designation of record on John M. Kelley, Jr., Esq., Special Assistant to the Attorney General of the United States, Department of Justice, Washington, D. C. and one copy of the same on George Morris Fay, Esq., United States Attorney, U. S. District Court House, D Street between 4th and 5th Streets, N. W., Washington, D. C. by mailing these copies regular United States Mail, postage prepaid.

Allan R. Rosenberg.

[fol. 299] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 300] Supreme Court of the United States

Order Allowing Certiorari—Filed June 21, 1948

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.